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ABSTRACT

The course of collective bargaining for public employees (including teachers) in the state of Alabama is examined in this study. Although Alabama currently has no state legislation providing for bargaining for teachers, the trend nationally, as well as in the state, seems to be toward establishment of bargaining units for public employees. The author interviewed representatives of Alabama organizations that indicated interest in and influence on employer-employee relations in the state. These organizations included business and employer groups such as the Chamber of Commerce, as well as employee groups such as the Alabama Education Association. He also surveyed school district personnel and selected legislators and mayors. The results of the survey indicate that Alabama is not yet a good nesting place for public employee collective bargaining. Also included is a summary of labor legislation for other states and a brief review of the history of collective bargaining. The author concludes that since some form of professional negotiations for teachers and other public employees is inevitable, the state should take immediate action to prepare for the passage of a collective bargaining law. The author proposes the content of such a law. (Author/DS)

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ALTERNATIVE CONSIDERATIONS FOR PROFESSIONAL NEGOTIATIONS IN EDUCATION FOR THE STATE OF ALABAMA

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PREFACE

Issues which divide people sharply frequently generate more heat than light. The present controversy over the matter of legislation which would give teachers the right, through their professional association, to negotiate with their employers is an example. Obviously, the more information available to those who are to make decisions on teacher negotiations concerning the background of the movement, its present status and the arguments for and against negotiations the better will be the legislation. It goes without saying that those who are to make decisions on an issue should prepare themselves for discharging this responsibility by careful study of all pertinent facts.

Alternative Considerations for Professional Negotiations in Education for the State of Alabama by Dr. John Kupice throws much light on the issue of teacher negotiations in this state. He provides needed perspective within which the issue can be considered by tracing the history and development of collective bargaining by teachers. The status of the movement is then examined and important statistics on its current dimensions are given.

With this background, Dr. Kupice then turns to an examination of what he calls the Alabama environment. He presents a very helpful review of the legal factors which bear on collective bargaining in the state, particularly those phases dealing with public employees. In addition, on the basis of contacts he made with business, industrial, professional and civic leaders in the state, he offers hitherto unavailable generalizations concerning the climate in the state for professional negotiations.

The study closes with a set of suggestions for consideration which, in essence, offer an alternative plan for legislation designed to achieve the same general ends sought through negotiations legislation in other states, but without some of the elements in this legislation which have generated a great deal of controversy. Two timely chapters have been added to the work of Dr. Kupice which carefully review developments in the state since his research was completed.

The reader of this book will be better prepared to make up his mind about teacher negotiations in Alabama by having studied this review of pertinent facts and the suggestions made for action. The authors have written with a fine degree of objectivity which adds strength to their work.

The rationale from which to constructively approach the resolution of this volatile issue should reconcile two essential but inherently contradictory factors. The first is that teachers, by virtue of being public employees working in local communities where they interact daily with the citizens who are served by the schools, have been viewed historically as being subservient to the wishes of the local citizenry, which often severely limits their professional autonomy. The second is the emerging pressure from the public for a degree of accountability of teachers for the effectiveness of their work which exceeds similar demands in the past. These opposite forces cannot be reconciled. If the conditions which may largely determine effectiveness are beyond control of the profession, how, then, can the teacher be held professionally accountable? In the highest sense this is the crucial issue of teacher negotiations.

Truman M. Pierce, Dean
School of Education
June 3, 1975

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I. Introduction

The research which served as the basis for the doctoral dissertation presented by Mr. John Kupice was completed during a five quarter span which included the 1973-74 academic year and the preceding and following summer quarters. During that period of time Mr. Kupice was a full time doctoral student at Auburn University on a sabbatical leave from the Stroudsburg, Pennsylvania School System, returning to his position as Assistant Superintendent of Schools of that system at the beginning of the 1974-75 school year. The major research tasks had been completed while he was in Alabama, but the writing of the dissertation was completed after his return to his administrative responsibilities.

Mr. Kupice, because of the timely nature of his topic and with the encouragement of his Committee, pushed to complete the study so that it might be available during the early spring of 1975 prior to the meeting of the AEA Assembly of Delegates and the 1975 Legislative Session. An approved draft of the dissertation was received from the Graduate School in time to distribute the summary chapter to selected individuals before and during the Assembly of Delegates. Dean Truman M. Pierce had access to the dissertation as he prepared his significant editorial statement which appeared in "The Birmingham News" on Thursday as the delegates began to assemble in Birmingham.

Mr. Kupice's actual experience in the process of professional negotiations qualifies him to be considered as something of an expert. He had concluded many years of active participation in the affairs of the professional association at the local, regional, and state levels in Pennsylvania by serving as one of two continuing members of the official negotiations committee for the local association during his final ten years as a classroom teacher. Since assuming administrative responsibilities in the system, he has negotiated for the Board of Education for the past four years.

With this background and experience in the negotiations movement, it developed rather naturally that Mr. Kupice might make a contribution in this crucial area through his doctoral research. Not only would such a study extend and expand Mr. Kupice's knowledge, it would also provide valuable information for the state of Alabama. This possibility influenced the selection of his committee to include Dr. William H. Holley, Jr. from the Department of Management in the School of Business and Dr. Allen Cleveland from the Educational Administration Department. One of Dr. Holley's major areas of expertise is collective bargaining. He regularly teaches in this area and stays current in the developments in Alabama through his research and extension activities. Dr. Cleveland has the most recent experience at the local system level in Alabama among the professors in his department. Additionally, he has established personnel practices, due process, and negotiations as primary areas of professional interest. Dr. Cleveland also continues in an active role with the Alabama Education Association (AEA). He serves as a member of the Instructional and Professional Development (IPD) Commission and was instrumental in drafting the Staff Development position statement which was subsequently adopted by the Assembly of Delegates.

Individual member and full Committee discussions with Mr. Kupice resulted in the development of the purpose of his study:

> ". . . to incorporate the implications of: the historic and philosophic perspective of negotiations as the process has developed in the United States; the survey of statutes in the 31 states with negotiations laws; analysis of selected environmental factors; into a model negotiations law for the State of Alabama."

Initially, this problem statement seemed a bit unmanageable and quite demanding. Mr. Kupice persevered and convinced the members of his Committee that he could handle the several components of the study, and approval was granted.

With the early identification of a research problem, Mr. Kupice was able to utilize effectively his course work in building on the data base for the study. A major aspect of Chapter III which focuses upon the legal basis for the negotiations movement was prepared as a term paper for Dr. Holley in a Management course on collective bargaining. Mr. Kupice incorporated the special attention given to the Financial Aspects of the Alabama Environment in Chapter V in a School Finance course completed under Dr. Boyd Scebra. Dr. Scebra provided many constructive suggestions for this section which reflected his specialized expertise in the School Finance area as well as his concurrent participation on an Education Study Commission Task Force which is charged with the responsibility of making recommendation to the Commission for possible revisions in the Minimum Foundation Program. Similarly, a significant portion of the review which covered the negotiations movement at the national level with special attention given to antecedent movements and forces was prepared for Dr. Gerald Johnson in a Political Science course in public administration. Dr. Johnson subsequently was assigned by the Graduate School as the outside reader for the dissertation. In that role, he made a number of strengthening suggestions at that stage of the dissertation process. Mr. Kupice, in summary, was skillful in his use of the professional expertise at Auburn University in developing the components of his study – a factor which certainly has contributed to the strength of the dissertation.

As noted earlier, Mr. Kupice conducted his study primarily during the 1973-74 academic year. No effort was made in the study to include the considerable activities which have developed around the negotiations issue in Alabama during the 1974-75 school year. In his summary chapter he did develop some alternatives for considerations and projected his expectations of events through the 1975 Legislative Session.

Discussions during the final stages of the dissertation resulted in the consensus conclusion that the results of his study should be made available to professional and lay personnel in Alabama. Further, a decision was made that the members of the Committee would draw upon their current assessments of events to prepare an addition to the study through the recently completed Assembly of Delegates and the continuing preparation for the 1975 Legislative Session. This sequel appears after the five chapters of the dissertation which have been included in their entirety. Dr. Allen Cleveland assumed major responsibility for the preparation of the extending comments which have included the more recent developments in the educational arena. In a similar manner, Dr. William Holley has looked more closely at the larger state environment with particular emphasis upon the efforts to pass negotiation legislations for public employees. Dr. Holley has also presented a substantial comparison between private sector and public sector collective bargaining from which he draws inferences in considering possible problems in the developments in the public sector. The Committee feels that this document should have value as the deliberation continues in Alabama with respect to negotiations.

As an experienced person in the field from outside the state, Mr. Kupice has attempted to look objectively at the developing situation in Alabama. His thoughts have been extended by members of his doctoral Committee who perhaps have a greater feel for the Alabama scene than Mr. Kupice could possibly grasp with his efforts to sample the Alabama environment. The combinations of these two efforts, hopefully, can contribute to our reaching decisions which will be in the collective best interest of public education in Alabama.

II. The Study*

Victor Hugo has stated cogently, "There is one thing stronger than all the armies in the world; and that is an idea whole time has come."[1] Such is the case of the movement to organize public employees. With teachers leading the surge in most states, the spectacular growth of collective bargaining for public employees in the sixties promises to continue through the seventies.

Three major casual factors have placed professional negotiations in education at the doorstep of every state in the union: (1) teacher militancy, (2) rivalry for teacher membership by the National Education Association (NEA) and the American Federation of Teachers (AFT), and (3) the success of employee organizations in the private sector.

First, teacher militancy has spread rapidly. T. M. Stinnett cites three causes for teacher militancy: (a) teachers are gravely concerned about the general neglect of public financial support for education; (b) working conditions and the make-up of the profession have changed. In 34 years (1931-1965) the number of school districts were reduced by 80 percent, making the districts larger and tending to impersonalize the school as well as making effective communication more difficult. More young people – especially men – have entered the profession, and they are more adamant regarding the rôles and rights of teachers. The new teachers are better prepared and less tolerant of paternalism; (c) teachers want a part in the decision-making in school operations.[2]

Rollin B. Posey lists other reasons for teacher militancy: (1) administrators have failed to consult teachers on personnel matters; (2) administrators have a community of interest with those they supervise, making it confusing to both groups, (3) boards have refused to discuss certain matters perceived as "management prerogatives" – much to the consternation of teachers; (4) belligerence has been successful in America, (5) teachers have learned to confront the true power center – the public and the legislature.[3]

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* The study reported in Chapters II through VI of this publication was the doctoral dissertation developed by John T. Kupice at Auburn University. His Committee was chaired by Dr. J. Foster Watkins and included Drs. Allen D. Cleveland, Charles M. Greenshields and William H. Holley, Jr. as members.

[1] George Seldes, *The Great Quotations*, New York: Pocket Books, 4th ed., 1969, p. 492.

[2] T. M. Stinnett, *Turmoil in Teaching*, New York: The Macmillan Company, 1968, pp. 34-36.

[3] Rollin B. Posey, "The New Militancy of Public Employees," *Public Administration Review*, Mar./April 1968, pp. 115-117.

Shils and Whittier add further teacher irritants: (1) forced teacher transfers to balance integration; (2) pupil integration and minority group pressures; (3) the lag of teacher salaries when compared to private industry levels; (4) reorganization of the schools, which threatens older teachers; (5) violence in the schools, and (6) intensified rate of change in educational programs.[4]

Further, in 1971, the President of the New Jersey Education Association, Mrs. Frances Carnochan, said,

> Until quite recently, many teachers considered themselves above the business of negotiations and organized action. As a result, teachers have been underpaid, humbled and ignored. Teachers finally learned that dedication and professionalism availed them little in the marketplace or at the councils of power. To remain quiet was to remain powerless and underpaid.[5]

Remaining quiet, or perhaps more aptly, the inability to be heard was induced by bigness. Stinmett, Kleinmann and Ware label this "a deeply significant psychological factor," with the bigness creating a "resultant loss of identity of the teachers."[6] Though better prepared than their forebearers in the profession; they are less recognized. Furthermore, the activism and successes of the civil rights movement have given teachers, who also feel oppressed, great courage.[7]

An intense rivalry developed between the National Education Association (NEA) and the American Federation of Teachers (AFT). Both sought membership increases from within and outside the other's membership rolls.

Since its founding in 1870 the NEA virtually had a monopoly on teacher membership until the AFT was founded in 1916. Both organizations grew and solidified gains until competition began in earnest in the mid-twentieth century. In 1961 representative rights were won by the United Federation of Teachers, an AFT local in New York City.[8] The victory in New York City gave fair warning to the NEA that unless it could compete for the allegiance of the urban teacher it was destined to become the professional organization for rural teachers. The message for NEA was clear – produce in behalf of teacher gains or lose members. The 1962 NEA convention signaled the beginning of a posture not unlike the union with which it was competing; consequently, the association became more militant.[9]

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[4] Edward B. Shils and C. Taylor Whittier, *Teachers, Administrators and Collective Bargaining*, New York: Thomas Y. Crowell Company, 1968, pp. 4-13.

[5] Educators Negotiating Service, "New Jersey Teachers Look at Militancy, Educational Service Bureau, Washington, D.C., (Feb. 15, 1971), p. 2.

[6] T. M. Stinnett, Jack H. Kleinmann and Martha L. Ware, *Professional Negotiation in Public Education*, New York: The Macmillan Company, 1967, p. 5.

[7] Ibid., p. 6.

[8] Charles R. Perry and Wesley A. Wildman, *The Impact of Negotiations in Public Education*, Worthington, Ohio: Charles A. Jones Publishing Co., 1970, p. 11.

Third, the success of employees in the private sector after the passage of the Wagner Act in 1935 illustrated the possibilities for public employees. President Kennedy's Executive Order 10988 in 1962 gave federal employees the right to organize and bargain, but not to strike. Among federal employees affected by this document were teachers. The transition from the federal government's bargaining with their teachers to states bargaining with their teachers was easily achieved.[10] Teachers since have led the public employee group in numbers in organizing and seeking negotiations rights.

If its growth since 1962 is any indication, the time has come for professional negotiations for public school employees. At the time of Executive Order 10988's issuance in 1962 only the state of Wisconsin had a public employee bargaining law. Beginning in 1965 when 5 states enacted statutes (Connecticut, Maryland, Massachusetts, Michigan and Washington) the march toward total coverage by all states began. In the following year two states (California and Rhode Island) passed laws; then in order: 1967 (Nebraska, New York and Texas); 1968 (New Jersey); 1969 (Delaware, Florida, Maine, New Hampshire, North Dakota, Oregon, South Dakota and Vermont); 1970 (Alaska, Hawaii, Kansas and Pennsylvania); 1971 (Idaho, Minnesota, Montana, Nevada and Oklahoma); 1973 (Indiana), and 1974 (Iowa).[11]

As the result of the passage of these laws and the use of other processes, negotiated teacher agreements grew from 389 in 1966-67, covering 208,000 teachers to 4,200 agreements covering 1.4 million teachers, of which 2,442 were comprehensive, covering more than simple procedural matters. Comprehensive agreements covered approximately 750,000 teachers in 1971-72.[12]

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[9] Ibid.

[10] ——. *Laws and Proposals Affecting Public School Negotiations,* Vol. I, Educational Service Bureau, Inc., Washington, D.C., 1970, pp. 5, 44.

[11] Joseph Falzon, "Summary of Professional Negotiations Statutes," National Education Association, Research Division, Washington, D.C., Nov. 8, 1973.

[12] Myron Lieberman, "Negotiations, Present and Future," *School Management,* May, 1973, p. 14.

"Professional negotiations" is a relatively new term on the Alabama educational scene. Formal negotiations leading to a written contract do not exist anywhere in the state, but each of the states now bargaining under statutes was in a similar situation. Opportunity for Alabama to benefit from previous experience that has proven successful and to avoid errors now exists. Further, the unique environment of the state necessitates careful consideration as to the type of law which would facilitate harmony and progress in Alabama education. Also, some state organizations do not favor any public employee bargaining law; necessitating informed future deliberation.

The consensus among public school educators is that if not within two years, certainly within four, Alabama will have a negotiations law for some, if not all, public employees. Teachers, (K-12) in Alabama, through their professional association, have forwarded testimony to the legislature in behalf of negotiations legislation. Administrators, through their statewide organization, have testified and are studying the possible alternatives for them under a statute providing for negotiations. Teacher training institutions are aware of the need for pre- and in-service exposure to the techniques of the bargaining process. School boards, through their association, have testified against proposed legislation but must be prepared to bargain if a law is enacted.

Need for the Study

Thirty-one states have statutes establishing mandatory or permissive negotiating by teachers. Research of these statutes as to their implications for Alabama education has not been presented in any formal study. Information is scattered. No single study has focused on the Alabama environment as it pertains to a professional negotiations law. Information, accurate and extensive, is sorely needed.

Secondary benefits from the study should provide Alabama educators and institutions with the locus for lead-time preparation in the negotiations process prior to the passage of a law. Also, the study should make educators aware of the status of bargaining in other states as well as the need for concentration on a law unique to the needs of the Alabama scene. Unless otherwise stated teachers shall hereafter mean those in public schools (K-12).

Ultimately, actions taken by Alabama educators regarding professional negotiations will of necessity be predicated on perspectives derived from the national scene.

Purpose

This study was intended to incorporate the implications of: the historic and philosophic perspective of negotiations as the process has developed in the United States; the survey of statutes in the 31 states with negotiations laws; analysis of selected Alabama environmental factors; into a model negotiations law for the State of Alabama.

Limitations

Factors which limited the study included: the assumption that leaders of selected organizations could accurately respond for their constituency, the need to protect the anonymity of superintendents of schools, mayors, officials and respondents in general, other organizations than those selected may exert considerable influence on the Alabama environment as it relates to professional negotiations.

Definition of Terms

The following terms are defined with emphasis on function:

American Federation of Teachers is a union of classroom teachers, exclusive of administrators, affiliated with the American Federation of Labor Congress of Industrial Organizations (A.F. of L. C.I.O.). Most of the approximately 250,000 members are in urban schools.

Arbitration is the process which involves a third party in the resolution of employer-employee disputes. The method may be voluntary (both parties agree to seek the third party) or compulsory (required by statute). The process may also be advisory (a recommendation only) or binding (the decision of the arbitrator is final).

Board of Education is the appointed or elective body whose responsibility is to represent the public as their overseers of a school unit. Their authority is usually delegated by the legislature. The development of policies and the hiring of personnel to implement them constitute their prime role.

Checkoff is a process of withholding money from employee earnings for the payment of employee dues. Both the withholding and transfer of said funds are authorized by agreement between the employer and the organization and by written consent of the employee.

Collective Bargaining is a continuing relationship between employer-employee entities, concerning themselves with wages or salaries, rates of pay, hours and other conditions and terms of employment. The negotiation, interpretation, execution and enforcement of the written contract comprise an evolving, continuous process.

Collective Negotiations is a compromise term which compromises the union term "collective bargaining" with the association term "professional negotiation."

Contract is the written agreement evolving from employer-employee negotiations. Typical provisions include: recognition, bargaining unit, grievance procedure, employee rights, employee wages or salary, benefits, employee responsibilities, employer rights, duration.

Demands or proposals are items presented for bargaining by either employee(s) or employer(s).

Exclusive representation designates a single employee organization as the bargaining agent for the unit.

Fact finding is ordinarily a process for handling impasse following negotiation and mediation. Investigation is followed by issuance of reports identifying issues. Recommendations for solution of the impasse are often presented.

Fringe benefits are supplemental considerations beyond salary received by employees. Such matters as time off with pay, premiums or payments on health, annuity or retirement plans are typical.

Good Faith is the intent by each side to enter into negotiations to reach agreement and to conduct themselves accordingly.

Grievance is a complaint or dispute arising out of the interpretation or application of the various articles of a contractual agreement.

Hours designates the work period for a specific period of time — day, week or longer.

Impasse is a breakdown in the negotiations process wherein neither party will compromise further.

Managerial Prerogative is the right of management to operate and supervise the organization.

Mediation is an attempt to bring parties in dispute to agreement. The process may be voluntary or compulsory and is advisory.

National Education Association is an organization of teachers and other educators with a membership of 1.1 million. Among its purposes is to promote the cause and welfare of "professionals" through fraternal, political and educational activities.

Professional Negotiations is the term used by professional organizations instead of "collective bargaining."

Strike is the withholding of services to pressure the employer during impasse.

Supervisor is any individual who may hire, transfer, suspend, reward or discipline other employees, or directs them under the authority of the employer.

Teacher is a school employee who has a part or full-time classroom responsibility as part of the instructional process.

Unit is the employee group showing an identifiable community of interest, a relationship in the performance of duties and the members desire to be exclusively represented.

Wages are compensations for services exclusive of fringe benefits. Salaries may be considered synonymous.

Written Agreement is the contract of acceptance of terms negotiated for a specified duration as signed by both parties.

Procedure

Chapter II contains a brief historical sketch of collective bargaining, sufficient to note significant events but intended only to establish a frame of reference. A legalistic and philosophic milieu was developed through a review of literature. The Alabama environment was partially developed by investigating the legal and judicial structure as it applies to employer-employee relations in general and public employer relations in particular.

With the legalistic and philosophic data base established both for the national and state scene, the statutes of the thirty-one states having established negotiations for teachers were investigated in Chapter III. Specific reference was made to coverage, type of representation, administrative agency, scope of negotiations, impasse resolution, grievance procedures, strikes, form of agreement. Each category was searched for the most appropriate choice to be applied to the unique environment of the state of Alabama as reflected by leaders of selected organizations and as described in Chapter IV.

Leaders of selected organizations in Alabama were interviewed in person or by telephone. Selections were made according to the apparent interest and influence the organizations had on employer-employee relations in Alabama. Among the employer groups interviewed were: the Alabama Chamber of Commerce; the Associated Industries of Alabama; the Alabama League of Municipalities; Alabama Association of School Boards; the Alabama Director of Personnel; selected legislators and mayors. Employee groups contributing to the study were: the Alabama Labor Council, AFL-CIO, Birmingham; the International Laborer's Council, Birmingham; the Alabama Education Association (AEA); the Alabama Association of School Administrators (AASA); the Alabama Association of Secondary School Principals (AASSP), the Department of Alabama Elementary School Principals, the American Association of University Professors (AAUP), the State Employees Association (SEA).

A structured interview was conducted with the executive director or leader of each organization either in person or by telephone. The interview instrument in the form of a questionnaire is included as Appendix A. The questionnaire sought the elicitation of the current status of bargaining; organizational policy outputs regarding negotiations; perspectives as to proposed legisiation; advisability of separate or inclusive legislation of teachers with other public employee groups; status of "meet and discuss" type negotiations now existent; desirability or rejection of a public employee bargaining law.

Also, as part of Chapter IV, the financial environment of Alabama education was included. Though not the prime topic of this study, negotiations generally imply the inclusion of financial factors. If negotiations are a balancing of power, or are power struggles, one can easily deduce that teachers will seek to negotiate with the public body holding legal authority and control of finances. Related literature and implications of the fiscal picture contributed to the body of information regarding the financial environment.

The data from each organization were analyzed. The environment of the state of Alabama as it pertains to negotiations was deduced from aggregate items, collected and presented topically. Information included in each item was synthesized for use in a broader evaluation in the last chapter. Both public and private groups were included because the environment as it encompasses active negotiating in the state includes the industrial community. As indicated earlier, teachers have led the surge for public bargaining in most states — not so in Alabama. Currently, only one known public employee, non-federal, non-professional contract or agreement exists in Alabama. The city of Fairfield executed a written contract in 1973 with the Union representing certain municipal employees.

Summary, Conclusions and Recommendations

The final chapter was introduced by a brief summary of the organization of the study. The design of the first four chapters and the sequential application of the data of each preceding chapter to the next provided evidence to indicate certain logical conclusions. From the conclusions an alternative plan of action was recommended until the unique Alabama environment is prepared for the implementation of a model professional negotiations law, developed in this study from the findings of the study. Recommendations were presented that would improve on and extend the data base of this study.

III. Review Of Related Literature

The context into which this study should be placed was predicated on the supposition that the history of the employee's search and pressure to procure adequate compensation or other benefits for his services generally is well known. Historically, the most basic events and trends prior to 1935 will be presented. More detailed coverage of the labor movement will be documented on the period from 1935 to the present.

Historical Overview

Davey characterized public policy toward collective bargaining as one of "suppression, toleration, encouragement or regulation."[1] Until the *Commonwealth of Massachusetts v. Hunt* decision in 1842, policy in the United States was one of suppression, and then until World War I state courts fluctuated between suppression and toleration. Except for the Railway Labor Act of 1926, anti-union policies dominated the national scene until a period of encouragement began in 1935. Thenceforth, the U.S. Government supported bargaining and organizing as never before. From 1947 to the present numerous regulatory statutes have sought the balancing of employer-employee influences.[2]

Prior to 1890, the judicial systems, especially those of the states, provided the pivotal impetus for resultant behavior in employer-employee relations. In the 1806 Cordwainers (shoemakers) Case in Philadelphia, the state court ruled that workers' combining to raise wages was illegal, and indeed constituted conspiracy. The state court of Massachusetts in *Commonwealth vs. Hunt* in 1842 identified illegality on the workers' part as having a "criminal or unlawful purpose or the use of criminal and unlawful means."[3]

In the absence of federal legislation on labor-management relations through most of our history, the states handled matters according to their unique environmental factors. In those matters covered by federal labor-management legislation between 1930 and 1960, the states had previously had the authority.

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[1] Harold W. Davey, *Contemporary Collective Bargaining*, 3rd ed., [Englewood Cliffs, N.J.: Prentice Hall, Inc., 1972] p. 55.

[2] Ibid., p. 59.

[3] Joseph Shister, Benjamin Aaron, and Clyde W. Summers, *Public Policy and Collective Bargaining*, [New York: Harper & Row, 1962] p. 2.

With the passage of the Sherman Act in 1890, as part of a major compromise to pacify business, consumers, hard and cheap money advocates and regional tariff advocates, the federal government became involved with statutes in labor relations. What was originally intended as an anti-trust law was soon turned against unions. In the famous Danbury Hatters Case of 1908, the Supreme Court of the United States affirmed decisions of lower federal courts by ruling that labor combinations came within the scope of the Sherman Anti-Trust Act of 1890.[4] Not only was the union sued but the individual union members were included in the triple-damages award. The federal government entered the picture in the settlement of industrial disputes through the courts and from subsequent writings it can be safely concluded that management was favored.

During the period 1894-1932 the use of the court injunction became a method of curtailing union strikes and other pressure tactics. The Educational Service Bureau has provided a succinct historical perspective of the use of court injunctions in labor disputes:

> Felix Frankfurter, the late U.S. Supreme Court justice, has traced the anti-strike injunction back to an 1868 English case in which a picket, protesting the lowering of his wages, was forbidden by English Chancery Court to carry a sign which "damnified" management. Although English law is cited as the source of the anti-strike injunction, Frankfurter reports that it was rarely used in England and "is America's distinctive contribution in the application of the law to industrial strife."[5]

English courts do not give an injunction to anyone lacking "clean hands." To receive an injunction in England, the applicant must be entirely guiltless.[6]

Courts used sections of the Sherman Act as the basis for the issuance of injunctions. The law stated:

> Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations is declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished

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[4] Harry A. Millis and Royal E. Montgomery, *Organized Labor*, [New York: McGraw-Hill Book Co., Inc., 1945] p. 96.

[5] Educators Negotiating Service, Educational Service Bureau, Washington, D.C., (September 1, 1973), p. 15.

[6] Ibid.

by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.[7]

The Sherman Act was turned against organized labor, as Bailey has described,

> The outworn Sherman Anti-Trust Act, wishy-washy though it was in restraining trusts, had been unusually effective in crushing labor organizations. The courts had unexpectedly held that monopolistic unions, like monopolistic corporations, fell under the restraints of the Sherman Act.[8]

With the passage of the Clayton Anti-Trust Act of 1914 came new hope for labor, which tended to be illusory. Section 6 stated that "The labor of a human being is not a commodity or article of commerce," and Section 20 forbade injunctions.[9] The ambiguity and vagueness of the wording of these two sections made the law all things to all men and eventually not preferential to either business or labor. When the law was interpreted by the courts, injunctions continued to flow until the test case decisions of the Wagner Act superceded the labor suppressing decisions under the Sherman and Clayton Acts.

As economic conditions became increasingly depressed during his waning days as U.S. President, Herbert Hoover signed the Norris-La Guardia Anti-Injunction Act of 1932 which made injunctions in labor disputes infrequent and led to the eventual extinction of the yellow-dog contract.[10] (A pre-condition of employment of non-union involvement.)

Though the Act lacked sufficient enforcement procedures, it opened the way for further legislation to bring some form of bargaining power to the worker. The National Industrial Recovery Act (NIRA) of 1933 attempted to limit the hours per day for working men to create more jobs; to place a maximum number of hours of labor per week; to place a minimum rate of pay. Further, working men were given the right to organize and bargain collectively through representatives of their own choosing. A National Labor Board of 7 members was created to administer the Act. The Act was declared unconstitutional because Congress could not delegate its power to the President.[11] Further, the court held that local business could not be subjected to Congressional regulation. The road had been paved, however, by the Norris-La Guardia Act and the NIRA for a comprehensive labor law.

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[7] Howard Myers, *Labor Law and Legislation,* [Cincinnati, Ohio: South-Western Publishing Company, 1968] p. 75.

[8] Thomas A. Bailey, *The American Pageant,* [Boston: D.C. Heath & Co., 1961] p. 695.

[9] Stanley I. Kutler, "Labor, The Clayton Act, and the Supreme Court," *Labor History,* Vol. 3, Winter 1962, No. 1, Tainiment Institute, New York, p. 19.

[10] Irving Bernstein, *A History of the American Worker 1920-1933, The Lean Years,* Boston, Massachusetts: Houghton Mifflin Company, 1960, p. 415.

In Table 1, Beal, Wickersham, and Kienast have constructed a useful overview of these parts of four laws currently valid and serving as the basic federal labor relations statutes: (1) the Norris-La Guardia Act of 1932; (2) the Wagner-Connery Act of 1935; (3) the Taft-Hartley Act of 1947; and (4) the Landrum-Griffin Act of 1959.[12] The Railway Labor Act of 1926 was excluded because it dealt only with railway and airline employees.

Eighteen provisions have accumulated over the past 42 years and serve as the implementing vehicles of private sector labor-management relations:[13]

1. "Yellow-dog" contracts were made unenforceable in the courts (Norris-La Guardia Act). Later, "yellow-dog" contracts were prohibited and remain outlawed (Wagner-Connery Act).[14]

2. The use of injunctions was restricted by the Norris-La Guardia Act. The preventive court order issued at the discretion of a judge to prevent harmful action was altered in the Taft-Hartley Act in that it gave the Attorney General power to obtain injunctions (for 80 days) in disputes creating or threatening to create a national emergency, and to prevent unfair labor practices.[15]

3. The National Labor Relations Board (NLRB) was established in 1935 consisting of 3 members and expanded to 5 members and a General Counsel in 1947 (Taft-Hartley Act).[16]

The functions of the NLRB were divided into a trial section and an investigative group. The General Counsel, who is not responsible to the Board, investigates and prepares cases for the Board. Using a separated executive and judicial structure, the Board handles two types of cases, representation and unfair labor practices. Members serve five years and they may be reappointed (Taft-Hartley Act).[17]

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[11] Bailey, op. cit., pg. 841.

[12] Edwin F. Beal, Edward D. Wickersham, and Philip Kienast, *The Practice of Collective Bargaining.* [Homewood, Illinois: Richard D. Irwing Inc., 1972] pp. 154-155.

[13] Ibid.

[14] Ibid., p. 157.

[15] Ibid.

[16] Ibid., p. 160.

[17] Ibid.

TABLE 1
THE EMERGING SUBSTANCE OF AMERICAN LABOR RELATIONS LAW

Norris-La Guardia Act (1932)	Wagner-Connery Act (1935)	Taft-Hartley Act (1947)	Landrum-Griffin Act (1959)
1. "Yellow dog" contract made unenforceable at law	Outlaws "yellow dog" contract (Sec. 8[B][3])	No change	No change
2. Severely restricts use of labor disputes	No change	NLRB empowered to obtain injunctions: (a) in national emergency disputes (Sec. 208-210) and (b) to prevent unfair labor practices (Sec. 10[E]-[M]).	No change
	3. Established NLRB (Sec. 3-6)	Separated General Counsel functions from Board functions (Sec. 3-6)	Representation questions delegated to Regional Directors (Sec. 3)
	4. Empowers NLRB to resolve questions of representation (Sec. 9)	Special treatment for foremen, guards, and professional employees (Sec. 9[B]) Only one election per year (Sec. 9[C][3]) Decertification elections (Sec. 9[C][1])	No Change
	5. Prohibits management actions aimed at frustrating employee free choice of representatives and organizational efforts (Sec. 8[A]-[1]-[4])	Employer "free speech" amendment (Sec. 8[C])	No Change
	6. Require management to bargain with union (Sec. 8[A][5])	No change	No Change

7. Requires union to bargain (Sec. 8[B][3])	No Change
8. Prohibits union actions aimed at frustrating employee free choice of representatives (Sec. 8[B][1])	No Change
9. Outlaws closed shop (Sec. 8[B][4])	No Change
10. Authorizes State "Right to Work" Laws 14[B])	No Change
11. Outlaws secondary boycott (Sec. 8[B][4])	Outlaws "hot cargo" Agreements except in garment and construction industries.
12. Require 60-day notice of contract termination (Sec. 8[D])	No change
13. Created Federal Mediation and Conciliation Service (Sec. 202-205)	No change
14. National Emergency Disputes procedures (Sec. 206-210)	No change
15. Makes union subject to suits in federal courts (Sec. 301)	No change
	16. "Bill of Rights" for union members (Title I)
	17. Responsibilities of union officers (Titles II, III, IV)
	18. Safeguards on union funds (Title V)

4. In representation cases, the Board has four problems to solve:

(a) Does it have jurisdiction?
(b) What is an appropriate unit?
(c) What is the will of the majority of the employees in this unit?
(d) How can a change in the will of the majority be accommodated?[18]

Foremen were excluded from seeking recognition under the law. Plant guards were restricted to units of exclusive guard membership and professional employees were excluded from plant unions unless the majority of their group voted for mutual representation.

Representation elections and certification of the results were made final for a one-year period. A decertification process was established whereby employees could discontinue representation by a failing or unwanted union (Taft-Hartley Act).

Regional Directors representing the NLRB were delegated authority in representation elections in over thirty cities with NLRB appellate jurisdiction (Landrum-Griffin Act).

5. Employer actions deemed as unfair practices were prohibited. Such actions include:

a. Interfering with employee acts to join, form, or encourage unions.

b. Control over a union (company union) or the denial of opportunity to represent employees by qualified unions.

c. Discrimination against workers who expressed interest in union affiliation or employee group activities.

d. Discrimination against employees who acted within framework of the act in their own or a fellow employee's behalf.

e. Refusal to bargain in good faith with employees.[19] (Wagner-Connery Act)

Subsequently, employers were given more latitude in speaking with employees "if such expression contains no threat of reprisal or force or promise of benefit."[20] (Taft-Hartley Act)

Conversely, unfair labor practices by unions were specified as follows:

a. Unions could not restrain or coerce members to bargain or not to bargain.

b. Unions could not induce employers to discriminate against non-union employees.

c. The union must bargain with an employer in good faith if it is the representative of his employees.

d. The union may not participate in strikes or boycotts under certain conditions.

e. An excessive initiation fee may not be charged under a union shop clause

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[18] Ibid., p. 162.
[19] Ibid., p. 163.
[20] Myers, op. cit., p. 855.

f. Unions may not force employers to pay for services not performed.[21] (Taft-Hartley Act)

6. Employers are required to bargain in good faith with duly authorized representatives of unions.[22] (Wagner-Connery Act)

7. Unions are required to bargain with employers in good faith provided they are the designated representatives selected for the purpose of collective bargaining.[23] (Taft-Hartley Act)

8. Unions may not restrain or coerce employees from self-organizing, forming, joining or assisting labor organizations, from bargaining through representatives of their own choosing. Employees also may refrain from any and all such activities unless their agreement requires membership or such action is within the provisions of law governing non-membership in a labor organization.[24] (Taft-Hartley Act)

9. Closed shops, which provide that membership in a union is prerequisite for employment, have been outlawed.[25] (Taft-Hartley Act)

10. State "right-to-work" laws were authorized in the following manner:

> Sec. 14(b). Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any state or territory in which such execution or application is prohibited by state or territorial law.[26] (Taft-Hartley Act)

11. Secondary boycotts were outlawed:

> The most common form of secondary boycott involves the application of economic pressure against an employer with whom the union has no dispute in order to force him to cease doing business with an employer with whom the union does have a dispute or whose employees the union is seeking to organize. (Taft-Hartley Act)
>
> Certain "loopholes" in the Taft-Hartley ban on secondary pressures were "plugged" by 1959 Landrum-Griffin Amendments: for example, "hot cargo" clauses are specifically banned as an unfair practice under Landrum-Griffin. A "hot cargo" clause is labor relations slang for a contract provision wherein the employer agrees that he will not discipline his employees for refusing to handle "struck work."[27]

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[21] Beal, Wickersham and Kienast, op. cit., p. 164.

[22] Ibid., p. 163.

[23] Ibid., p. 165.

[24] Ibid.

[25] Ibid.

[26] Ibid.

[27] Davey, op cit., p. 62.

The garment and construction industries were excepted by the Act.[28] (Landrum-Griffin Act)

12. Neither party may modify nor terminate a contract without written notice to the other party 60 days prior to the expiration date or offers to meet and discuss modification or termination.[29] (Taft-Hartley Act)

13. A Federal Mediation and Conciliation Service was established as an advisory service used as a means of reaching agreement on contracts and grievance procedures.[30] (Taft-Hartley Act)

14. In labor disputes which may imperil the national health or safety the President may appoint a board of inquiry to conduct hearings on the causes and circumstances of the disagreement. After 60 days the board will meet – if the dispute is still unsettled – and within 15 days the National Labor Relations Board shall take a secret ballot of the employees on the employer's final offer and inform the Attorney General within 5 days.[31] (Taft-Hartley Act)

15. Unions may sue or be sued in federal courts for violations of collective bargaining agreements.[32] (Taft-Hartley Act)

16. A "Bill of Rights" for union members in Title I of the Landrum-Griffin Act of 1959 established certain guarantees, including:

a. Members have equal rights on attendance at union meetings, on nominations and voting.
b. Freedom of speech.
c. Dues may only be raised according to prescribed procedures.
d. Members may sue their unions.
e. Members may not be disciplined without due process.
f. A copy of the written agreement must be provided to the member on request.[33]

17. Officers of unions must file a report with the Secretary of Labor each year. This document should contain its constitution, listing of officers and their salaries, dues procedures, accounting of its business transactions. Full disclosure of business dealings within the organization as well as with any employer with whom the union is bargaining.[34] (Landrum-Griffin Act)

18. Union officers, acting in a judiciary capacity, must maintain

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[28] Beal, Wickersham and Kienast, op. cit., p. 165.

[29] Ibid.

[30] Ibid.

[31] Ibid., p. 167.

[32] Ibid., p. 168.

[33] Ibid., p. 172.

[34] Ibid.

the membership and organizational funds in safe and legal trust.[35] (Landrum-Griffin Act)

Since no federal statute for all public employees exists, labor-management relations in the public sector rely heavily on precedent in labor-management relations in industry. Until such time as a unique model of bargaining in the public sector is developed reliance must be based on the historical experience of private enterprise.

Various amounts of public employee-employer bargaining in the United States has existed for most of this century, beginning with the Lloyd-LaFollette Act of 1912.[36] Extensive involvement in the bargaining process by governments and their agencies did not occur until 1962. Two major events in that year made possible the sensational thrust of the past 12 years. Foremost, President Kennedy issued Executive Order Number 10988 which affirmed the right of federal workers to organize and bargain, but not to strike. Vosloo summarized the order into five dimensions:[37]

> First, the Executive Order is basically an embodiment of the findings and recommendations of the President's Task Force and its aim is to establish a uniform policy framework for employee-management relations for all agencies of the executive branch which clarifies and strengthens the rights of federal employees to organize and deal collectively with agency management officials on work-connected matters.
>
> Secondly, the Executive Order leans heavily on labor relations philosophy and experience in the private sector. The language of the order borrows heavily from the National Labor Relations Act of 1935 (NLRA), as amended. It should also be noted that the Order exhibits some radical departures from the NLRA such as the tri-level form of recognition, the exclusion of binding arbitration, and the prohibition of strikes.
>
> Thirdly, it would seem that the most significant innovation introduced is the exclusive employee representative, which is derived from the "exclusive bargaining agent" principle in private labor relations practice and experience.
>
> Fourthly, the Order neatly protects the special obligations and considerations regarding agency management as representatives of the "sovereign employer."
>
> Lastly, the Order rules out both the "closed shop" and the "union shop" arrangements as unsuitable to the Federal system of public employment.

Shaw gave the document significant importance in public bargaining:

> It would be hard to exaggerate the major significance which President Kennedy's promulgation of Executive Order 10988 on January 17, 1962 has

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[35] Ibid., p. 173.

[36] Lloyd-LaFollette Act. 37 Stat. 555 (1912), as amended in 1958.

[37] William B. Vosloo, *Collective Bargaining in the United States Federal Civil Service,* [Chicago: Public Personnel Association, 1966] pp. 74, 75.

had on public employee labor relations in this country. Although the scope of bargaining was considerably more restricted than in the private sector, Executive Order 10988 provided a tremendous impetus for organization at the federal level as well as at the state and local level.[38]

Among federal employees affected by this document were teachers. It was but a matter of time before the Overseas Teachers Association and those on reservations bargained.

Another important event of 1962 was the victory of the United Federation of Teachers in New York State, as discussed in Chapter I.

In one year the President's Executive Order and the victory of a militant teacher's union had paved the way for city, state and federal level bargaining for public employees. The Norwalk, Connecticut Teacher's Strike of 1946 and the 1959 Wisconsin public employee bargaining law also contributed to the establishment of the benchmarks of current bargaining trends in the public sector.

Commenting on the importance of Executive Order 10988, Davey stated that "E. O. 10988 had a catalytic impact far beyond the confines of the federal establishment."[39] The effect on state, county, and municipal employees' organizing was reflected in the spectacular union growth in the period since 1962.[40] The second Order on public bargaining was issued by President Nixon on October 29, 1969 (Executive Order 11491). Twenty states enacted negotiations laws in the time span of the two Executive Orders.[41] President Nixon's Order was intended to improve on the previous Order in many ways:[42] (1) finality in decision making was placed in the newly established Federal Labor Relations Council (FLRC) or in the Assistant Secretary of Labor for Labor-Management Relations; (2) more emphasis was placed on the exclusive aspects of recognition rights; (3) "national consultation rights" may be accorded to an employee organization which enrolls a "substantial" number of employees of an agency; (4) arbitration, grievance procedures and the scope of bargaining has been strengthened to include resolution by arbitration by the Assistant Secretary of Labor instead of the previous advisory arbitration, the permissive filing of exceptions in grievance procedures to arbitrator's rulings with the FLRC; (5) a Federal Services Impasses Panel (FSIP) which will function when mediation fails; (6) the Order prohibits six management and six unfair labor practices similar to those in the private sector; (7) employee organizations shall not discriminate against an employee because of "race, color, creed, sex, age, or national origins."[43] Thus, through the evolution of legislation and other governmental action an historical vantage point with respect to private and public collective bargaining has been reached. Yet not all states have kept pace with the movement, because nineteen states still do not have collective bargaining statutes. Among the major reasons for reluctance by some states to pass bargaining laws are concerns of a philosophical, legal, and political nature.

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[38] Lee C. Shaw, "The Development of State and Federal Laws," *Public Workers and Public Unions*, ed. Sam Zagoria, The American Assembly, Columbia University, [Englewood Cliffs, N.J.: Prentice Hall, Inc., 1972] p. 24.

[39] Davey, op. cit., p. 342.

[40] Ibid.

[41] Falzon, op. cit.

[42] Davey, op. cit., p. 360.

Philosophic

Since the primary focus of this research effort was directed toward bargaining in the public sector in general and to its application to education in particular the process of "professional negotiations" was addressed. Three basic questions appeared germaine to the issue:

1. Does the public employee have the right to join or not to join a union or an association?

2. Must the state respond to a petition to negotiate?

3. May the state surrender or delegate its power to its representatives or to representatives of the workers?

1. Does the public employee have the right to join or not to join a union or an association?

Shaw noted that prior to 1960 courts were uniform in their decisions that public employees had no constitutional rights to form or join unions. Also, legislative bodies could forbid employees from doing so. As late as 1963 the Michigan Supreme Court ruled "there is no provision of either State or Federal Constitution which gives to individuals the right to be employed in government service or the right to continue therein." Continuing, Shaw stated:

> In 1968 the United States Court of Appeals for the Seventh Circuit (Illinois, Indiana, Wisconsin) held for the first time in *McLaughlin v. Tilendis* that "an individual's right to form and join a union is protected by the First Amendment." This landmark case involved two teachers who instituted suit against a local school district alleging that their teaching contracts had not been renewed because of their activities on behalf of the American Federation of Teachers.[44]

In two cases reviewed by Drayton N. Hamilton, General Counsel for the Alabama League of Municipalities, the right of public employees to join unions was affirmed:

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[43] Beal, Wickersham and Kienast, op. cit., p. 771.

[44] Lee C. Shaw, op. cit., p. 20.

> In *American Federation of State, County and Municipal Employees v. Woodward*, 406 F. 2d 137 (USCA-8th-1969), the Eighth Circuit Court of Appeals considered the question of whether public employees have a constitutionally protected right to belong to labor unions. Plaintiffs were employees of the City of North Platte, Nebraska, who were allegedly discharged for union membership; the District Court dismissed their complaint but the Court of Appeals reversed and in arriving at this decision the Court held that union membership is protected by the right of association under the First and Fourteenth Amendments and that public employment may not be conditioned upon the surrender of such constitutional rights.
>
> A similar issue was raised in *Atkins v. City of Charlotte*, 296 F. Supp. 1068, where the Firefighters Local sought declaratory judgment and injunctive relief against a North Carolina statute which both prohibited union membership by public employees and the execution of collective bargaining agreements by the municipality. The District Court held that the prohibition against union membership by public employees violated the First and Fourteenth Amendments. On the second issue, that is, the illegality of collective bargaining agreements between the city and the labor union, the Court held that this prohibition by the State was valid in that such a right was not a constitutional right.[45]

Judge Roy Mayfall of the Alabama Circuit Court, Madison County, on June 15, 1972, struck down the prohibitive sections of the Solomon Act which disallowed public employees from joining unions. A part of his decree stated:

> This court must conclude, as have two recent federal courts that public employees have the same constitutional rights under the First Amendment as any other American citizen. See: *Atkins v. City of Charlotte* (D.C.N.C.) 296 F. Supp. 1068 (1969) and *Melton v. City of Atlanta* (D.C. Ga.) 324 F. Supp. 315 (1971).
>
> IT IS THEREFORE, ORDERED, ADJUDGED, AND BY THE COURT, AS FOLLOWS:
>
> 1. That the declaratory judgment of the complainants be and the same hereby is granted and that the Solomon Act or Title 55, Sections 317(1) through 317(4), Code of Alabama, Recompiled 1958, as amended, is declared void as repugnant to the 1st and 14th Amendments to the U.S. Constitution.[46]

Alabama public employees may join labor organizations as of the 6-months appeal date of Judge Mayfall's decree or Jan. 15, 1973.

2. Must the State respond to a petition to negotiate?

Generally, attempts to answer this question have been related to the broader concept of the "sovereignty" issue. Syed wisely advocated caution with any approach to sovereignty:

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[45] Drayton N. Hamilton, "The Legal View Point," *The Alabama Municipal Journal*, November 1970, p. 18.

[46] *Alabama Labor Council v. Frazier*, Alabama Circuit Court, Madison County, Case 29,375 (Copy of Original Decree), June 15, 1972, p. 3.

> This term denotes and connotes matters that are as obtruse and complex as any in political thought. At the risk of over-simplification, we may say that sovereignty refers to the legal and/or actual supremacy of a center of governmental authority and power over all other centers of authority and power – governments, cooperations, groups, individuals – within a given territory. As often it refers also to an authority's moral rights to supremacy. Theorists of sovereignty have generally found the idea of absoluteness implicit in the idea of supremacy. Actually, absolutes are rare, if not altogether unavailable.[47]

Moskow, Loewenberg and Koziara defined sovereignty as:

> . . . the supreme, absolute and uncontrollable power by which any independent state is governed. The sovereign is the person, body or state in which supreme authority is vested. In the United States, sovereignty rests with the people.
>
> Sovereign power however, is exercised for the people by the federal and state governments. These governments delegate some of their power to counties, municipalities, and special districts.[48]

Hazard's very learned study of the history of negotiations included a definition of the sovereignty theory which "holds that no government may be called to account by individual persons without its consent."[49] Sovereign immunity was rooted deep in English common law and was not one of the trappings of regal despotism discarded after the revolution. He went on to explain that when the American Revolution was being fought many states incurred debts to private citizens. To have the repayment of debts handled by state courts and to solicit support for the passage of the Constitution, sovereign immunity was adopted. Hazard quoted Hamilton on the doctrine:

> It is inherent in the nature of sovereignty, not to be amenable to the suit of an individual without its consent. This is the . . . general practice of mankind, and the exemption, as one of the attributes of sovereignty, is now enjoyed by the Government of every state in the union. . . . The contracts between a native and individuals are only binding on the conscience of the sovereign, and have no pretensions to a compulsive force. They confer no right of action, independent of the sovereign will . . .[50]

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[47] Anwar Hussain Syed, *The Political Theory of American Local Government*, [New York: Random House, Inc., 1966], p. 6.

[48] Michael H. Moskow, J. Joseph Loewenberg, and Edward Clifford Koziara, *Collective Bargaining in Public Employment*, New York: Random House, 1970.

[49] William Robert Hazard, *"The Legal Status of Collective Negotiations by Public School Teachers and Implications for Public School Administration,"* Unpublished Dissertation, Northwestern University, Evanston, Illinois, 1966, p. 62.

[50] Ibid., p. 63.

Woodward and Peterson state that:

> Executives in government agencies have often taken the position that they are unable to bargain collectively since they have not been given the power to do so. Their reasoning is that ultimate sovereignty rests with the citizens and their duly elected representatives.[51]

Notations thus far have either defined sovereignty or sovereign immunity. Inherent are applicable connotations. Opponents of public sector negotiations often retain allegiance to the indivisibility of sovereign power. Others see cracks in the armor and the opportunity to bargain.

Warner and Hennessy ascribe state and local government's reluctance to bargain to their indecision as to "whether collective negotiation is compatible with or a threat to governmental sovereignty.[52]

The Advisory Commission on Intergovernmental Relations attributes reluctance to permit public employee bargaining to the belief that public and private employment are different and the major point of difference is that government possesses authority that cannot be delegated. The Commission conceptualizes the variance in the interpretation of the sovereignty doctrine as being contained in the views of three types of groups:[53]

> 1. The "Traditionalist View" which claims that the sovereignty of government precludes the public employer from entering into any commitment under compulsion or, even if agreed to, from respecting, such commitments at a later time.
>
> 2. The "Revisionist" Critique . . . the traditional interpretation has been refined. . . . Four counter-arguments . . . have facilitated this accommodation (a) tort or contract claims for redress of alleged injuries did not compromise governmental authority; (b) . . . when a public employer signs an agreement . . . it merely has agreed to limit such powers in certain areas for a given period in pursuit of its own proper concern – improving relations with its employees; (c) since some of the contracts which governmental units have signed . . . have contained provisions calling for binding arbitration . . . sufficient precedent exists for public employers to enter into labor relations agreements with their own employees; (d) in a democracy sovereign authority ultimately reposes with the people, when the people's representatives . . . authorize con-

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[51] Robert T. Woodworth and Richard B. Peterson, *Collective Negotiation for Public and Professional Employees,* [Glenview, Illinois: Scott Foresman and Co., 1969], p. 9.

[52] Kenneth O. Warner and Mary L. Hennessy, *Public Management at the Bargaining Table,* [Chicago: Public Personnel Association, 1967], p. 74.

[53] Advisory Commission on Intergovernmental Relations, "Problems and Issues in Public Employer-Employee Relations," *Labor Management Policies for State and Local Government,* in Educators Negotiating Service, Oct. 15, 1970, pp. 4-5.

> sultation, discussion and negotiations . . . this cannot be considered an abdication of sovereignty.
>
> 3. The "Pragmatic" Synthesis holds that the sovereign authority of government encompasses the power to engage voluntarily in collective bargaining or discussions as a matter of "enlightened" public personnel policy.

The sovereignty doctrine has been used by those who fear the effects of professional negotiations on government.[54] When a government does negotiate with its employees it is also exercising its sovereignty. A most acceptable evaluation of the status of the sovereignty doctrine is that adopted by the federal government and most state governments in that they "can agree to bargain collectively but can be compelled to do so only by law."[55] The dichotomy between governmental compulsion and volition is vividly described by two doctrinal quotes on sovereignty by Hart:

> . . . the doctrine is a clear and effective bar to any action on the part of government employees to compel the government to enter involuntarily into any type of collective-bargaining relationship . . . . . . the doctrine does not preclude the enactment of legislation specifically authorizing the government to enter into collective-bargaining relationships with its employees.[56]

Frankel believes that governments have a "constitutional adjustment" to make in employee relations:

> the idea of sovereignty is a useful legal fiction . . . it provides for an ultimate authority within the state that may be invoked under certain conditions . . . the notion of a monolithic, all-powerful sovereign is a thing of the past.[57]

Nigro offers a succinct closing statement, "Our point rather is that the sovereignty concept is an elastic one, and that it is unbending public officials who will not bend it at all."[58]

3. May the state surrender or delegate its power to its representatives or to representatives of the workers?

For years most state courts held that delegated power may not be re-delegated. The well-known 1974 case *Springfield v. Clouse* had a lasting effect on public sector negotiations because of its specificity:

> It is familiar principle of constitutional law that the legislature cannot delegate its legislative powers and any attempted delegation thereof is void.

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[54] Moskow, Loewenberg and Koziara, op. cit., p. 18.

[55] Ibid.

[56] Wilson R. Hart, *Collective Bargaining in the Federal Civil Service*, New York: Harper & Brothers, 1961, p. 44.

[57] Saul Frankel, "Employer-Employee Relations in the Public Service," *Public Personnel Review*, Oct. 1964, p. 221.

[58] Felix A. Nigro, *Management-Employee Relations in the Public Service*: [Chicago: Public Personnel Association, 1969], p. 26.

> If such powers cannot be delegated they surely cannot be bargained or contracted away, and certainly not by any administrative or executive officers who cannot have any legislative powers. Although executive and administrative officers may be vested with a certain amount of discretion and may be authorized to act or make regulations in accordance with certain fixed standards; nevertheless the matter of making such standards involves the making of legislative powers. Thus, qualifications, tenure, compensation and working conditions of public officers and employees are wholly matters of lawmaking and cannot be the subject of bargaining or contract.[59]

Hazard condensed the doctrine into two convenient guides:

> (1) legislative powers may not be delegated to private groups or to individuals, and
>
> (2) an executive officer or a commission holding powers delegated by the legislative branch may not delegate these powers to another.[60]

Further, Hazard identified types of delegation:

> The distinction between proper and improper delegation of legislative power is this: a delegation of power to frame and promulgate administrative rulings vested in a government agency with some kind of veto power in a private party is valid; a delegation of rule making power in a private party with veto power in the government agency is invalid.[61]

Hart maintained that so long as the power to guide and regulate remained with the administrative agency and if the executive agency retained its authority as delegated by the legislative branch the agency may bargain validly. It must, however, retain the power to decide outside the bargaining process.[62]

Doherty and Oberer trace power from a written constitution to allocated power in a check-and-balances approach. There may be no private repository of power. It is also inconceivable that the legislature would pretend to regulate all aspects of our complex society by statutes. Hence lesser governmental agencies are created to deal with specific areas under legislative standards. One of these agencies is the local school board.[63]

The Fourteenth Amendment to the Constitution places the same restrictions on the states as are placed on the Congress in the first ten amendments. Public school employees, as citizens, have the right to assemble peaceably and to petition the government under the equal protection of the laws. As agencies of the state, school boards have no right to do what is forbidden to the state.[64] Le Fleur adds that "school boards are created by the state and hence derive all their powers from the state legislature.[65] As state and not local officers, "They hold office by virtue of legislative enactment and their powers may be extended, limited, or destroyed at the discretion of the state legislature."[66] The powers of the board are defined in a New York case *People v. Turner*:

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[59] *Springfield v. Clouse*, 356 Mo. 1239, 206 SW (2nd) 539 (1947).

[60] Hazard, op. cit., p. 74.

[61] Ibid., p. 64.

[62] Hart, op. cit., p. 51.

[63] Robert E. Doherty and Walter E. Oberer, *Teachers, School Boards, and Collective Bargaining: A Changing of the Guard* (Ithaca, N.Y.: Cayuga Press of Ithaca, 1967), p. 53.

> . . . the school board has and can exercise those powers that are granted in express words; those fairly implied in or necessarily incidental to the powers expressly granted, and those essential to the declared objects and purposes of the corporation.[67]

Also, in the 1910 case of *A. H. Andrews Co. v. Delight Special School District* the Supreme Court of Arkansas was more specific in identifying implied powers:

> Powers in the directors of a school district will be implied when the exercise thereof is necessary to enable them to perform the duties imposed upon them; school directors being "public officers," and subject to the same rule as other public officers in respect to their implied powers.[68]

Many statutes are silent on whether school boards may sign agreements. Recent cases may constitute a discernible trend toward the use of implied powers to justify negotiations with staffs.[69] That local governments and school boards have implied powers to carry out express powers,[70] is both accepted and rejected by competent scholars.

President Kennedy's Executive Order 10988 in 1962 helped to break down school board reluctance to negotiate by weakening the delegation of powers argument.[71] The federal government's example started a snowballing effect among state and local governmental agencies. Governments at all levels have as a matter of public policy bargained with their employees.

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[64] T. M. Stinnett, Jack H. Kleinman and Martha L. Ware, op. cit., p. 22.

[65] Lawrence Walter Le Fleur, *The Current Legal Status and Trends of Collective Bargaining Between Public School Teachers and School Boards in the United States*, Urbana-Champaign, University of Illinois, 1971, p. 117.

[66] Robert E. Hamilton and Paul R. Mort, *The Law and Public Education*, (Brooklyn: The Foundation Press, 1959), p. 116 in Le Fleur, op. cit., pp. 26-27.

[67] Ibid., p. 27.

[68] *A. H. Andrews Co. v. Delight Special School District*, 128 S.W. 361.

[69] Charles R. Perry and Wesley A. Wildman, op. cit., p. 40.

[70] Moskow, Loewenberg and Koziara, op. cit., p. 18.

[71] Robert James Thorton, *Collective Negotiations for Teachers: History and Economic Effects*, (Urbana-Champaign, Ill., 1970), p. 57. "Delegata Potestas Non Potest Delegari, according to the American Bar Association, is a principle of law which holds that powers which have been delegated to a public agency cannot be, in turn, delegated further or contracted away."

In addition to the issues of sovereignty and delegation of powers there are other differences between private and public bargaining and between private organizations and the public schools. The basic differences include:

1. Private organizations are motivated by profit; schools are not.
2. Private organizations deal with private initiative and enterprise; schools are created for the general welfare and the individual.
3. Private organizations are competitive; schools are not in the true sense.
4. Private organizations produce goods and services; schools involve themselves with human growth and development.
5. Private organizations are accountable to the stockholders or owners; schools are responsible to the entire community.
6. Bargaining in the private sector emphasizes fair distribution of profits; school negotiations often include policy making and management rights.[72]

Davy stated numerous characteristics which affect the labor relations picture when the employer, or management is the government: (1) the organization is non-profit and is performing a service as a monopoly; (2) most of the budget is allocated to salaries and wages; (3) the scope of bargaining is limited as is the scope of impasse resolution; (4) management is often difficult to define, as is the employer; (5) many states do not have a statutory framework for employee-employer relations, nor are there experienced negotiators and neutrals to serve the process.[73]

Macy noted that in democratic governments the authority is at the base rather than at the top of the structure.[74] The search for "management" is an elusive one at times.

Public policy decisions by legislative mandate often invade the domain of working conditions of public employees. Whether the employees agree or not they must accept the hard fact that the task of resolving problems of public policy belongs to the government.[75]

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[72] Lloyd W. Ashby, James E. McGinnis and Thomas E. Persing, *Common Sense in Negotiations in Public Education,* (Danville, Ill.: The Interstate Printers and Publishers, Inc., 1972), p. 9.

[73] Davey, op. cit., pp. 345, 346.

[74] John W. Macy, Jr., "The Role of Bargaining in the Public Service," *Public Workers and Public Unions,* ed. Sam Zagoria, (Englewood Cliffs, N.J.: Prentice Hall, Inc., 1972), p. 10.

[75] Ibid., p. 11.

Similarly, government is not free to allow negotiations without constraints. Whereas in the private sector the market economy conditions worker requests and management response, in public employment agencies must operate within their budgets.[76] Public employers are judged on their ability to balance budgets or in finding new revenue sources.

Lieberman and Moskow identify three approaches to collective negotiations in public educational organizations:

1. The marketplace approach whereby the teachers attempt to sell their services for the maximum return and school boards seek to purchase services for as little as possible. Each thinks short term to extract as much as possible on a yearly basis.

2. The professional approach whereby teachers seek participation in policy matters that go beyond the normal definition of "wages, hours and other conditions of employment." Such issues as curriculum, allocation of resources for various instructional purposes, etc., are negotiated.

3. The problem solving approach incorporates the joint utilization of human resources to solve problems – including wages, salaries, etc. Each group, board, teachers and administrators adapt their strategies to long term resolution of school district problems.[77]

Helsby cites Dr. Seymour Scher's outline of public sector negotiation:

1. The mood, needs, and demands of the community constituency.
2. The mood, needs, and demands of the political establishment.
3. The limitations, restrictions, and requirements of constitutions, statutes, ordinances, civil services, education laws, municipal charters, etc.
4. The mood, needs, and demands of the employer.
5. The mood, needs, and demands of the employees.[78]

The first three do not exist in the private sector. Further, since the bargaining process takes place in a political environment, political ratification is necessary by the legislative body or an agency it created.

In summary, current public sector bargaining may be compared to private sector bargaining during the 1930's and 40's. Imundo noted,

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[76] Moskow, Loewenberg and Koziara, op. cit., p. 16.

[77] Myron Lieberman and Michael H. Moskow, *Collective Negotiations for Teachers: An Approach to School Administration*, (Chicago: Rand McNally & Company, 1966), pp. 7-9.

[78] Robert D. Helsby, "A Political System for a Political World," *Labor Law Journal*, August, 1973, p. 505.

> Many of the private sector bargaining relationship problems of the 30's and 40's which precipitated bitter conflicts have been settled only to arise again to restrict public sector collective bargaining. . . . In effect, a number of states have labor-management relations policies comparable to conditions in the private sector during the 1930's.[79]

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[79] Louis V. Imundo, Jr., "Some Comparisons Between Public Sector and Private Sector Collective Bargaining," *Labor Law Journal*, December, 1973, p. 810.

IV. Survey Of Professional Negotiations Statutes

The survey of statutes in the 31 states permitting or requiring professional negotiations between teacher organizations and boards of education are limited to the following factors: coverage, representation, administrative agency, grievance procedures, impasse resolution, scope of negotiations, strikes, final form.

Lieberman and Moskow recommend that the following items should be included in legislation regulating negotiations between teachers and school boards: exclusive recognition, unit of representation, scope of negotiations, written agreements, prohibited practices, impasse procedures, and an impartial agency to administer the law.[1] Shils and Whitier claim that the following flexibilities should they be incorporated into state laws as proposed by the NEA, are just as demanding as the unions:

1. Recognition of the right to organize.
2. Recognition of the local employee organization.
3. Designation of how the organization shall qualify to be the negotiating representative.
4. A formal method through which negotiations will automatically be opened between teachers and boards of education.
5. Provisions for written proposals to be submitted or exchanged between the parties.
6. The requiring of the two parties to reach an agreement and the signing of the written agreement at such point.
7. Procedures to be followed in the case of deadlocked negotiations.
8. The use of an appeals procedure to resolve impasses, when necessary.[2]

Stinnett, Kleinmann and Ware included nine "basic elements" within professional negotiation: recognition, channels, negotiation, agreement, impasse, subjects of negotiation, rights of individuals, rights to join employee organizations and right to strike.[3] Elements included in this study are based on related literature.

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[1] Myron Lieberman and Michael H. Moskow, *Collective Negotiations for Teachers*, [Chicago: Rand McNally & Company, 1966], pp. 395-96.

[2] Edward B. Shils, C. Taylor Whittier, op. cit., pp. 98-99.

Teacher-board negotiations do occur other than by statute; e.g. through court decisions, attorneys general opinions, executive order of governors and as the result of local understandings in the absence of the processes identified in this paragraph.

ANALYSES OF STATUTES

Status of Statutes

Statutes in 27 states mandate that boards of education or other governing bodies negotiate or meet and confer with representatives of teacher organizations. Typical of the mandatory provisions for bargaining is the Pennsylvania public policy:

> Section 101. The General Assembly of the Commonwealth of Pennsylvania declares that it is the public policy of this Commonwealth and the purpose of this act to promote orderly and constructive relationships between all public employers and their employees subject, however, to the paramount right of the citizens of this Commonwealth to keep inviolate the guarantees for their health, safety and welfare. Unresolved disputes between the public employer and its employees are injurious to the public and the General Assembly is therefore aware that adequate means must be established for minimizing them and providing for their resolution. Within the limitations imposed upon the governmental processes by these rights of the public at large and recognizing that harmonious relationships are required between the public employer and its employees, the General Assembly has determined that the overall policy may best be accomplished by (1) granting to public employees the right to organize and choose freely their representatives; (2) requiring public employers to negotiate and bargain with employee organizations representing public employees and to enter into written agreements evidencing the result of such bargaining; and (3) establishing procedures to provide for the protection of the rights of the public employee, the public employer and the public at large.[4]

Four states have enacted statutes which permit boards, directors and governing bodies to negotiate with teachers – Florida, Nebraska, New Hampshire, and Texas. Typical permissive provisions are contained in the Nebraska statute:

> Sec. 79-1290. Board of education; organization; meet; confer. Notwithstanding the provisions of Secs. 79-1287 to 79-1296, no board of education or school board of any public school district in the state shall be required to

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[3] Timothy M. Stinnett, Jack H. Kleinmann, Martha L. Ware, op. cit., pp. 190-92.

[4] Educators Negotiating Service, "Pennsylvania Public Employee Relations Act," Educational Service Bureau, Washington, D.C., (September 1, 1970), p. 1.

TABLE 2

A SUMMARY OF STATES WHICH HAVE ENACTED PROFESSIONAL NEGOTIATIONS STATUTES

Date of Enactment	Negotiations Mandated	Negotiations Permitted
1970	Alaska	
1965	California	
1965	Connecticut	
1969	Delaware	
1959, 1965		Florida
1967, 1970	Hawaii	
1973	Indiana	
1974	Iowa	
1970	Kansas	
1969	Maine	
1968	Maryland	
1965	Massachusetts	
1965	Michigan	
1967, 1971	Minnesota	
1967, 1969		Nebraska
1969	Nevada	
1959, 1967		New Hampshire
1968	New Jersey	
1967	New York	
1969	North Dakota	
1965	Oregon	
1966	Rhode Island	
1969	South Dakota	
1967		Texas
1969	Vermont	
1965	Washington	
1959	Wisconsin	

meet or confer with representatives of an organization of certificated school employees unless a majority of the members of such board determines to recognize such organization. Any such recognition shall be and remain in effect for a period of one year.[5]

Table 2 identifies state statutes as mandatory or permissive with dates of enactment and amendment.

Coverage

Statutes in 15 states cover public employees, including teachers. A separate law for teachers and other certificated school employees has been enacted in 16 stat[illegible].

As shown in Table 3, six states specifically exclude elected and appointed officials – California, Hawaii, Massachusetts, Minnesota, Oregon, Pennsylvania. The superintendent of schools, the chief administrative officer or supervisory personnel are excluded from statutory coverage in 16 of the 31 states granting the right to negotiate to other school employees. Three states – California, Minne-

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[5] Bureau of National Affairs, Inc., "Nebraska Teachers: Right to Bargain Collectively," *Labor Relations Reporter, State Labor Laws*, Washington, D.C. 20037, (May 1, 1972), SLL 37:225.

TABLE 3
A COVERAGE OF TEACHERS AND OTHER PUBLIC EMPLOYEES, AND EXCLUSIONS, BY STATE STATUTES

State	Coverage		Exclusions
	Public Employees Including Teachers	Teachers or School Personnel Separately	
Alaska		★	Superintendents
California		★	Elected employees or appointees of the Governor
Connecticut		★	Superintendents
Delaware		★	Supervisory and staff personnel
Florida	★		
Hawaii	★		Elected and appointed officials, top level management and confidential employees
Idaho		★	Superintendents, supervisors and principals may be excluded
Indiana		★	Supervisors, confidential and security personnel and non-certificated employees
Iowa	★		Superintendents, assistant superintendents, principals and assistant principals
Kansas		★	
Maine	★		Superintendents, assistant superintendents, temporary, part-time or provisional employees
Maryland		★	Superintendents and employer negotiators
Massachusetts	★		Elected officials, board members, police and executive officers
Michigan	★		
Minnesota	★		Election and election officials, national guard and part-time personnel
Montana		★	Chief administrative officers
Nebraska		★	
Nevada	★		
New Hampshire	★		
New Jersey	★		Superintendents and other chief administrative officers
New York	★		
North Dakota		★	
Oklahoma		★	
Oregon	★		Elected and appointed officials, confidential and supervisory employees
Pennsylvania	★		Elected and appointed and management level employees
Rhode Island		★	Superintendents, principals and assistant principals
South Dakota	★		
Texas		★	
Vermont		★	
Washington		★	Chief administrative officer
Wisconsin	★		City and village police, sheriff's deputies and county traffic officers

sota and Wisconsin – exclude personnel other than elected or appointed officials or management level employees.

Sample clauses defining coverage are parts of Sections 243.711 to 243.795 of the amended Oregon Public Employees Collective Bargaining Act:

(17) Public employee means an employee of a public employer but does not include elected officials, persons appointed to serve on boards or commissions or persons who are "confidential employees" or "supervisory employees."

(18) Public employer means the State of Oregon or any political subdivision therein, including cities, counties, community colleges, school districts, and public and quasi public corporations, except mass transit districts organized under ORS Ch. 267. Public employer includes any individuals designated by the public employer to act in its interest in dealing with public employees.[6]

Representation

In 26 of the 31 states the statutes provide for exclusive representation for the elected or designated employee organization. Section 14.20.560 of the Alaska act, is a sample of a representation provision:

> Teachers Bargaining Groups. (a) When a majority of the certified employees in a school district have designated an educational organization of their own choosing to bargain for them, the organization shall be recognized by the school board as the bargaining agent for all the certified staff, except superintendents of schools. The membership of any such recognized educational organization shall be composed principally of those employed in the teaching profession in Alaska.[7]

Nebraska and New York statutes provide no specific provision for representation. California's law provides for representative membership from the various employee organizations on a 5 to 9 member council.

> Notwithstanding the provisions of Section 13082 and 13083, in the event there is more than one employee organization representing certificated employee, the public school employer shall meet and confer with the representatives of such employee organizations through a *certificated employee* council with regard to the matters specified in this section, provided that nothing herein shall prohibit any employee from appearing in his own behalf in his employment relations with the public school employer. The *certificated employee* council shall have not more than nine or less than five members and shall be composed of representatives of those employee organizations who are entitled to representation on the *certificated employee* council. An employee organization representing *certificated employees* shall be entitled to appoint such number of members of the *certificated employee* council as bears as nearly as practicable the same ratio to the total number of members of the *certificated employee* council as the number of members of the employee organization bears to the total number of certificated employees of the public school employer who are members of employee organizations representing certificated employees. Each employee organization shall adopt procedures

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[6] Educators Negotiating Service, "Oregon Public Employee Bargaining Law," Educational Service Bureau, Washington, D.C., (September 1, 1970), p. 2.

[7] Bureau of National Affairs, Inc., "Alaska Teachers: Right to Bargain Collectively," *Labor Relations Reporter, State Labor Laws,* Washington, D.C., 20037, (July 17, 1972), SLL 11:203.

> for selecting its proportionate share of members of the *certificated employee* council, provided that such members shall be selected no later than October 31 of each school year. Within 10 days after October 31, the members of the *certificated employee* council shall meet and select a chairman, and thereafter such *certificated employee* council shall be legally constituted to meet and confer as provided for by the provisions of this article. Employee organizations shall exercise the rights given by Section 13083 through the certificated employee council provided for in this section.[8]

The New Hampshire statute is clear on representation:

> III. If an employee organization claims the right to act as exclusive representative for any employee, it may file a petition with the commission setting forth its claims and describing the unit for which it claims the right of exclusive representation. . . .[9]

Since local school boards in New Hampshire are not required to meet with representatives of local teachers it applies only when boards grant the opportunity.[10]

Texas permits Boards of Trustees, rural high school districts and common school districts and their administrative personnel to consult with teachers on certain matters of educational policy and conditions of employment without a representation policy statewide.[11]

Administrative Agency

Statutes which guide public employee-employer relations are administered by various types of boards, agencies and commissions. As indicated in Table 4, ten states use their Public Employment Relations Board or Commission; 7 states assigned the administrative duty to existing state agencies; 6 states assigned the duty to local school boards; 3 states make the State Board of Education the administrative agency; 1 state established an independent state agency; 4 states made no statutory assignment of the administrative duty.

Samples of provisions of statutes that designate various agencies, boards and commissions as the administrative bodies provide differing approaches to the matter. From the ten states choosing the

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[8] Educators Negotiating Service, Inc., "Winton Act Amendment (California)", Educational Service Bureau, Washington, D.C., (November 1, 1970), p. 2.

[9] Bureau of National Affairs, Inc., "New Hampshire Public Employees: Collective Bargaining," *Labor Relations Reporter, State Labor Laws,* Washington, D.C., 20037, (March 22, 1971), SLL 39:204.

[10] Joseph Falzon, "Summary of State Statutes," National Education Research Division, Washington, D.C., (November 9, 1973), p. 3.

[11] Ibid., p. 4.

TABLE 4

BOARDS, AGENCIES, COUNCILS AND COMMISSIONS RESPONSIBLE FOR STATE ADMINISTRATION OF PROFESSIONAL NEGOTIATIONS STATUTES

Public Employment Relations Board (Commission)	Existing State Labor Agency	Local School Districts	State Board of Education	Independent State Agencies	No Specific Provisions
Florida Hawaii Indiana Iowa Maine Minnesota New Jersey New York Oregon Wisconsin	Massachusetts: Board of Conciliation and Arbitration and Labor Relations Council Michigan: Labor Mediation Board Nevada: Local Government Employee-Management Relations Council New Hampshire: State Labor Commission Pennsylvania: Pennsylvania Labor Relations Board Rhode Island: State Labor Relations Board South Dakota: Commissioner of Labor and Management Relations	Alaska California Delaware Nebraska Vermont Washington	Connecticut Kansas Maryland	North Dakota	Idaho Montana Oklahoma Texas

State Public Employment Relations Board (Commission) as the administrative body the Hawaii statute is representative:

> Sec. 89-5. Hawaii public employment relations board. (a) There is created a Hawaii public employment relations board composed of three members of which (1) one member shall be representative of management, (2) one member shall be representative of labor, and (3) the third member, the chairman, shall be representative of the public. All members shall be appointed by the governor for terms of six years each, except that the terms of members first appointed shall be for four, five and six years respectively as designated by the governor at the time of appointments. . . .
>
> The members shall devote full time to their duties as members of the board. The chairman of the board shall be paid a salary at the rate of ninety-five per cent of the salary of a circuit court judge. Each of the other members shall be paid a salary at the rate of ninety per cent of the chairman's salary. . . .[12]

One of the seven states using existing administering agencies is Pennsylvania. The Pennsylvania Public Employee Relations Act established the existing Pennsylvania Labor Relations Board as the administrative agency for the law. In doing so the legislature recognized the other duties of the board:

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[12] Bureau of National Affairs, Inc., "Hawaii Public Employees: Right to Bargain," *Labor Relations Reporter, State Labor Laws,* Washington, D.C., 20037, No. 379, SLL 21:227.

> Article V, Section 501. The board shall exercise those powers and perform those duties which are specifically provided for in this act. These powers and duties shall be in addition to and exercised completely independent of any powers and duties specifically granted to it by other statutory enactments.[13]

Nebraska was one of six states placing the administrative function at the local school board level:

> Sec. 79-1294. Board of education, representative organization; meetings, rules and regulations; adopt – Each board of education or school board of a public school district which shall determine to meet and confer with representatives of an organization of certified employees, shall adopt rules and regulations for the administration of such negotiations under this act.[14]

In the three states designating the State Board of Education as the administrative agency, the statutes lean heavily on the local boards of education for resolution of difficulties. The Maryland statute authorizes the state board to administer representation elections and impasse resolutions:

> . . . The state board of education shall adopt reasonable rules and regulations for the conduct of elections held hereunder and the certification of the results thereof, and it shall provide supervision of such elections . . . (i) If upon request of either party the state superintendent of schools determines from the facts that an impasse is reached in negotiations between a public school employer and an employee organization designated as an exclusive negotiating agent, the assistance and advice of the State Board of Education may be requested, with the consent of both parties.[15]

North Dakota has created a special fact finding commission to administer its statute:

> Sec. 3. There is hereby created a commission to be known as the "education fact finding commission," hereinafter called "the commission," which shall consist of three members, one to be appointed by the superintendent of public instruction, one by the governor, and one by the attorney general. The appointee of the superintendent of public instruction shall be the chairman of the commission. The members of the commission shall be persons experienced in educational activities. The original appointment by the superintendent of public instruction shall be for a term of three years. The original appointment by the governor shall be for a term of two years. The original appointment

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[13] Educators Negotiating Service, "Pennsylvania Public Employee Relations Act," Educational Service Bureau, Washington, D.C., (September 1, 1970), p. 3.

[14] Bureau of National Affairs, Inc., Nebraska, op. cit., SLL 37:224.

[15] Bureau of National Affairs, Inc., "Maryland Public School Employees: Right to Bargain Collectively," *Labor Relations Reporter, State Labor Laws*, Washington, D.C., 20037. (November 6, 1972), SLL 30:225.

by the attorney general shall be for a term of one year. Their successors shall be appointed for terms of three years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. At all times, two members of the commission shall constitute a quorum.

Sec. 4. Members of the commission shall receive twenty-five dollars per day for their attendance at regular or special meetings of the commission or in the performance of such special duties as the commission may direct. In addition to such compensation, they shall receive an allowance for actual and necessary travel and subsistence expenses while performing commission functions away from their places of residence. Fact finders, appointed by the commission, including commission members when so serving, shall be reimbursed for expense on the same basis as members of the commission and shall receive such compensation as the commission shall from time to time establish.[16]

Scope of Negotiations

Twenty of the 31 professional negotiations statutes mandate as negotiable items some form of the private bargaining matters of "wages, hours and other terms and conditions of employment" as shown in Table 5. The Hawaii law affords an overview of negotiable items with inclusions and exclusions:

Section 89-9. Scope of negotiations.

(a) The employer and the exclusive representative shall meet at reasonable times, including meetings in advance of the employer's budget-making process, and shall negotiate in good faith with respect to wages, hours, and other terms and conditions of employment which are subject to negotiations under this Act and which are to be embodied in a written agreement, or any questions arising thereunder, but such obligation does not compel either party to agree to a proposal or make a concession.

(b) The employer or the exclusive representative desiring to initiate negotiations shall notify the other in writing, setting forth the time and place of the meeting desired and generally the nature of the business to be discussed, and shall mail the notice by certified mail to the last known address of the other party sufficiently in advance of the meeting.

(c) Except as otherwise provided herein, all matters affecting employee relations, including those that are, or may be the subject of a regulation promulgated by the employer or any personnel director, are subject to consultation with the exclusive representatives of the employees concerned. The employer shall make every reasonable effort to consult with the exclusive representatives prior to affecting changes in any major policy affecting employee relations.

(d) Excluded from the subjects of negotiations are matters of classification and reclassification, retirement benefits and the salary ranges and the number of incremental and longevity steps now provided by law, provided that the amount of wages to be paid in each range and step and the length of service necessary for the incremental and longevity steps shall be negotiable. The employer and the exclusive representative shall not agree to any proposal

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[16] Bureau of National Affairs, Inc., "North Dakota Teachers: Right to Bargain," *Labor Relations Reporter, State Labor Laws,* Washington, D.C., 20037, (November 2, 1970), SLL 44:223.

TABLE 5

SCOPE OF NEGOTIATIONS: DEFINED BY STATE STATUTES

Wages, Hours, Working Conditions	Educ. Objectives, Course Content, Curriculum, Textbooks	Educational Policies (Meet, and Consult)	Management Rights Clauses	Employment and Fulfillment of Professional Duties	Matters that Either or both Parties wishes to Negotiate
California	California	Indiana	California	Alaska	Connecticut
Delaware	Washington	Maine	Hawaii	Oklahoma	Delaware
Hawaii			Kansas	Kansas	Idaho
Indiana			Nevada		Iowa
Iowa			New Hampshire		Nebraska
Kansas			Pennsylvania		Vermont
Maine			Vermont		
Maryland			Wisconsin		
Massachusetts					
Minnesota					
Montana					
Nevada					
New Jersey					
New York					
North Dakota					
Oregon					
Pennsylvania					
Rhode Island					
South Dakota					
Wisconsin					

> which would be inconsistent with merit principles or the principle of equal pay for equal work pursuant to sections 76-1, 76-2, 77-31 and 77-33, or which would interfere with the rights of a public employer to (1) direct employees; (2) determine qualification, standards for work, the nature and contents of examinations, hire, promote, transfer, assign, and retain employees in positions and suspend, demote, discharge, or take other disciplinary action against employees for proper cause; (3) relieve an employee from duties because of lack of work or other legitimate reason; (4) maintain efficiency of government operations; (5) determine methods, means, and personnel by which the employer's operations are to be conducted; and take such actions as may be necessary to carry out the missions of the employer in cases of emergencies.[17]

States differ as to what they consider negotiable. Indiana requires that a school employer discuss but not be required to negotiate:

> . . . working conditions, other than those provided in Section 4; curriculum development and revision; textbook selection; teaching methods; selection, assignment or promotion of personnel; student discipline; expulsion or supervision of students; pupil-teacher ratio; class size or budget appropriations. . . .[18]

Maine disallows the bargaining of educational policies:

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[17] Bureau of National Affairs, Inc., Hawaii, op. cit., SLL No. 379, 21:231.

[18] Bureau of National Affairs, Inc., "Indiana Teachers: Right to Bargain Collectively," *Labor Relations Reporter, State Labor Laws,* Washington, D.C., 20037, April 15, 1974, SLL No. 356, SLL 24:140.

Sec. 965. Obligation to bargain

1. Negotiations. It shall be the obligation of the public employer and the bargaining agent to bargain collectively. "Collective bargaining" means for the purposes of this chapter, their mutual obligation:

A. To meet at reasonable times;

B. To meet within 10 days after receipt of written notice from the other party requesting a meeting for collective bargaining purposes, provided the parties have not otherwise agreed in a prior written contract;

C. To confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession and except that public employers of teachers shall meet and consult but not negotiate with respect to educational policies for the purpose of this paragraph, educational policies shall not include wages, hours, working conditions or contract grievance arbitration;[19]

Alaska, Kansas and Oklahoma allow much broader scopes of negotiation.

Alaska. Sec. 14.20.550. Each school board and the board of directors for the state-operated schools, shall negotiate with its certificated employees in good faith on matters pertaining to their employment and the fulfillment of their professional duties.[20]

Kansas. Sec. 72-5413 [Definitions] . . . (g) "Professional negotiation" means meeting, conferring, consulting and discussing in a good faith parties to reach agreement with respect to the terms and conditions of professional service.[21]

Oklahoma. Sec. 6 (negotiations procedures). Once the organization has been determined, the board of education or its duly designated representative must meet with the duly designated representative of the organization and within 60 days shall complete an agreement outlining negotiation procedures. The board of education and the representatives of the organization must negotiate in good faith on items affecting the performance of professional services.[22]

Eight states include management rights clauses in their statutes as a limitation to the scope of bargaining as shown in Table 5. To lessen the influence of the employee group in matters which are considered governmental policy, states such as Pennsylvania have included degrees of protection for management personnel:

Section 702. Public employers shall not be required to bargain over matters of inherent managerial policy, which shall include but not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel. Public employers, however, shall be required to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by public employee representatives.

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[19] Bureau of National Affairs, Inc., "Maine Public Employees; Bargain Rights," *State Labor Laws*, Washington, D.C., August 27, 1973, SLL No. 367, 29:213.

[20] Bureau of National Affairs, Inc., Alaska, op. cit., SLL No. 11, 203-04.

[21] Bureau of National Affairs, Inc., "Kansas Teachers: Right to Bargain," *Labor Relations Reporter, State Labor Laws*, Washington, D.C., (October 29, 1973)), SLL No. 372, 26:228.

[22] Educators Negotiating Service, "Oklahoma Bargaining Law," Educational Service Bureau, Washington, D.C., (November 1, 1971), p. 1.

Section 703. The parties to the collective bargaining process shall not effect or implement a provision in a collective bargaining agreement if the implementation of that provision would be in violation of, or inconsistent with, or in conflict with any statute or statutes enacted by the General Assembly of the Commonwealth of Pennsylvania or the provisions of municipal home rule charters.

Section 704. Public employers shall not be required to bargain with units of first level supervisors or their representatives but shall be required to meet and discuss with first level supervisors or their representatives, on matters deemed to be bargainable for other public employees covered by this act.[23]

Matters that both parties wish to negotiate are permitted in Connecticut, Delaware, Idaho, Iowa, Nebraska and Vermont. The Iowa statute includes specific matters as well as "other matters mutually agreed upon:"

Section 9. Scope of Negotiations. The public employer and the employee organization shall meet at reasonable times, including meetings reasonably in advance of the public employer's budget making process, to negotiate in good faith with respect to wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-service training and other matters mutually agreed upon.[24]

Grievance Procedures

Statutory provisions for grievance procedures in contracts are included in the laws of Alaska, Hawaii, Indiana, Iowa, Kansas, Maine, Maryland, Minnesota, Nebraska, New Jersey, New York, Oregon, South Dakota and Vermont. The New Jersey Employer-Employee Relations Act mandates that agreements include a grievance procedure but does not specify what type:

Public employers shall negotiate written policies setting forth grievance procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements and administrative decisions affecting them, provided that such grievance procedures shall be included in any agreement entered into between the public

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[23] Educators Negotiating Service, "Pennsylvania, op. cit., p. 5.

[24] Educators Negotiating Service, "Iowa Public Employment Relations Act," Educational Service Bureau, Washington, D.C., 20006, (June 1, 1974), p. 3.

> employer and the representative organization. Such grievance procedures may provide for binding arbitration as a means for resolving disputes.[25]

California and North Dakota require that "meet and confer" procedures be implemented to settle contract disputes. In neither state are the results of the meeting and discussion binding.

Arbitration is mandatory in the settlement of grievance disputes in Hawaii, Minnesota and Pennsylvania. Pennsylvania's statute mandates the establishment of a tri-partite arbitration board as a final step:

> Section 903. Arbitration of disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement is mandatory. The procedure to be adopted is a proper subject of bargaining with the proviso that the final step shall provide for a binding decision by an arbitrator or a tri-partite board of arbitrators as the parties may agree. Any decision of the arbitrator or arbitrators requiring legislation will only be effective if such legislation is enacted:
>
> (1) If the parties cannot voluntarily agree upon the selection of an arbitrator, the parties shall notify the Bureau of Mediation of their inability to do so. The Bureau of Mediation shall then submit to the parties the names of seven arbitrators. Each party shall alternately strike a name until one name remains. The public employer shall strike the first name. The person remaining shall be the arbitrator.
>
> (2) The costs of arbitration shall be shared equally by the parties. Fees paid to arbitrators shall be based on a schedule established by the Bureau of Mediation.[26]

Six states have clauses that permit arbitration of disputes arising out of the interpretation of provisions in a collective bargaining agreement – Indiana, Kansas, Maine, Maryland, New Jersey and Oregon. The Indiana statute shows clearly the mandatory wording on subjects of bargaining (shall) as well as the permissive nature (may) of grievance procedure provisions:

> Section 4. Subjects of bargaining. A school employer shall bargain collectively with the exclusive representative on the following: salary, wages, hours, and salary and wage related fringe benefits. A contract may also contain a grievance procedure culminating in final and binding arbitration of unresolved grievances, but such binding arbitration shall have no power to amend, add to, subtract from or supplement provisions of the contract.[27]

Michigan requires that unresolved disputes be handled by the Labor Mediation Board:

> Sec. 423.207. Grievances, Submission of, Duty of Labor Mediation Board

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[25] Bureau of National Affairs, Inc., 'New Jersey Employer-Employee Relations Act," *Labor Relations Reporter, State Labor Laws*, Washington, D.C., (February 4, 1974), SLL No. 382, 40:249.

[26] Educators Negotiating Service, Pennsylvania, op. cit., p. 6.

[27] Bureau of National Affairs, Inc., Indiana, op. cit., SLL No. 356, 24:140.

to Mediate; Powers and Authority of Board. (1) Upon the request of the collective bargaining representative defined in Sec. 11 [Sec. 423.211], or if no representative has been designated or selected, upon the request of a majority of any given group of public employees evidenced by a petition signed by the majority and delivered to the labor mediation board, or upon request of any public employer of the employees, the labor mediation board forthwith shall mediate the grievances set forth in the petition or notice, and for the purposes of mediating the grievances, the labor mediation board shall exercise the powers and authority conferred upon the board by Secs. 10 and 11 of Act 176 of the Public Acts of 1939, as amended, being Secs. 423.10 and 423.11 of the Michigan Compiled Laws.[28]

Emphasis on local settlement of disputes is highlighted by various clauses of the Nevada "Local Government Employee-Management Relations Act:"

Sec. 288.080. Local government employee-management relations board: creation; members' number, qualifications, terms of office, appointment; filling vacancies.

1. The local government employee-management relations board is hereby created, to consist of three members, broadly representative of the public and not closely allied with any employee organization or local government employer, not more than two of whom shall be members of the same political party. Except as provided in subsection 2, the term of office of each member shall be four years.

2. The governor shall appoint the members of the board. Of the first three members appointed, the governor shall designate one whose term shall expire at the end of two years. Whenever a vacancy occurs on the board other than through the expiration of a term of office, the governor shall fill such vacancy by appointment for the unexpired term.[29]

Sec. 288.110. Rules; procedures for fact finding; advisory guidelines; hearings and orders; injunctions.

1. The board may make rules governing proceedings before it and procedures for fact finding and may issue advisory guidelines for the use of local government employers in the recognition of employee organizations and determination of negotiating units.

2. The board may hear and determine any complaint arising out of the interpretation of, or performance under, the provisions of this chapter by any local government employer or employee organization. The board, after a hearing, if it finds that the complaint is well taken, may order any person to refrain from the action complained of or to restore to the party aggrieved any benefit of which he has been deprived by such action.

3. Any party aggrieved by the failure of any person to obey an order of

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[28] Bureau of National Affairs, Inc., "Michigan Public Employment Relations Act," *Labor Relations Reporter, State Labor Laws*, Washington, D.C., 20037, (July 30, 1973), SLL No. 364, 32:264.

[29] Bureau of National Affairs, Inc., "Nevada Local Government Employees-Management Relations Act," *Labor Relations Reporter, State Labor Laws*, Washington, D.C., 20037, (December 17, 1973), SLL No. 377, 38:227.

TABLE 6
STATE STATUTORY PROVISIONS FOR GRIEVANCE PROCEDURES

Agreement Must Contain Grievance Procedure	Meet and Confer	Final Binding Arbitration (Mandatory)	Final Binding Arbitration (Permissive)	Labor-Management Board Mediation	No Specific Provisions	In Local Contract
Alaska	California	Hawaii	Indiana	Michigan	Connecticut	Montana
Hawaii	North Dakota	Minnesota	Kansas		Delaware	Nevada
Iowa		Pennsylvania	Maine		Idaho	
Indiana			Maryland		Massachusetts	
Kansas			New Jersey		Oklahoma	
Maine			Oregon		Rhode Island	
Maryland					Washington	
Minnesota					Wisconsin	
Nebraska						
New Jersey						
New York						
Oregon						
South Dakota						
Vermont						

the board issued pursuant to subsection 2 may apply to a court of competent jurisdiction for a prohibitory or mandatory injunction to enforce such order.[30]

Eight state statutes have no specific provision for grievance settlement as shown in Table 6.

Impasse Resolution

If agreement is not reached after a specific time duration the negotiations are considered to be at impasse. Only two states, California and Kansas, have no specific statutory provision for impasse resolution. South Dakota allows the parties in dispute to adopt any mutually acceptable procedure:

> 3-18-1.1. INTERVENTION BY COMMISSIONER ON FAILURE TO REACH AGREEMENT. – In case of impasse or failure to reach an agreement in negotiations conducted under the provisions of this chapter, either party may request the commissioner of labor to intervene under the provisions of SS 60-10-1 to 60-10-3. Nothing in this section shall prohibit the parties to such an impasse from adopting any other procedure to facilitate a settlement that may be mutually agreeable.[31]

Five states require some form of fact finding when an agreement cannot be negotiated (Montana, Nebraska, Oklahoma, Rhode Island, Washington). In the Nebraska law which is permissive, not mandatory, the creation of a fact finding board is mandated:

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[30] Bureau of National Affairs, Inc., Nevada, op. cit., pp. 227-28.

[31] Educators Negotiating Service, "South Dakota Public Employee Bargaining Law," Educational Service Bureau, Washington, D.C., 20006, (June 1, 1971), p. 2.

Sec. 79-1293. Board of education; organization; representatives; meetings; mutual agreements; written; dispute; fact finding board; selected; how. – If the board of education or school board shall determine to meet and confer with representatives of the employee organizations, such meetings shall be good faith negotiations in regard to the matters set forth in the request to meet and confer and the acceptance thereof.

Should such negotiations result in mutual agreement, the matters so agreed upon shall be reduced to written form and signed by the representative of each of the negotiating parties.

If the parties are unable to agree on any such matters, the dispute shall be submitted by the organization to a fact finding board composed by one member selected by the board of education or school board, one member selected by the employee organization, and a third member selected by the two members appointed by the parties. If the members appointed by each party fails to agree upon a third member, within ten days after their selection, they may request the State Department of Education to submit a list of five persons deemed qualified to serve as members of such board. Upon receipt of such list, the members selected by the parties shall alternately strike names until one remains, and the person not stricken shall become the third member.

Such fact finding board shall hear and review the matters relating to the dispute and shall within thirty days render a report of its opinion which shall recommend a basis for settlement of the dispute. Such recommendations shall receive the good faith consideration of the parties as a method of settling the dispute but in no case shall be binding on the school district.[32]

No statute mandates immediate binding arbitration in the resolution of impasse. Various combinations of procedures are used. Alaska, Connecticut, Maryland and Rhode Island appear to conclude with mediation. Yet the Rhode Island statute continues by going directly from mediation to mandatory binding arbitration on non-monetary issues:

28-9.3-9. Unresolved issues submitted to mediation or arbitration. – In the event that the negotiating or bargaining agent and the school committee are unable within thirty (30) days from and including the date of their first meeting, to reach an agreement on a contract, either of them may request mediation and conciliation upon any and all unresolved issues by the state department of education, the director of labor or from any other source. If mediation and conciliation fall or are not requested, at any time after said thirty (30) days either party may request that any and all unresolved issues shall be submitted to arbitration by sending such request by certified mail, postage prepaid to the other party, setting forth the issues to be arbitrated.

23-9.3-12. Appeal from decision. – The decision of the arbitrators shall be made public and shall be binding upon the certified public school teachers and their representative and the school committee on all matters not involving the expenditure of money. The decision of the arbitrators shall be final and no appeal shall lie therefrom except on the ground that the decision was procured by fraud or that it violates the law, in which case appeals shall be to the superior court. The school committee shall within three (3) days after it receives the decision send a true copy thereof by certified or registered mail, postage prepaid, to the department or agency responsible for the preparation of the budget and to the agency which appropriates money for the operation of the schools in the city, town or regional school district involved, if said decision involves the expenditure of money.[33]

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[32] Bureau of National Affairs, Inc., Nebraska, op. cit., SLL 37:226

As shown by Table 7, a combination of mediation and fact finding for resolution of negotiations impasse is the most often used procedure. Nine states use a form of the combination whose decisions are nonbinding. Wisconsin's statute, which covers all public employees, simply requires that each party notify the other in writing of their acceptance or rejection, whole or in part, of the fact finder's recommendations:

> Sec. 111.86. Arbitration in General. – Parties to the dispute pertaining to the interpretation of a collective bargaining agreement may agree in writing to have the commission or any other appointing agency serve as arbitrator or may designate any other competent, impartial and disinterested persons to so serve. Such arbitration proceedings shall be governed by Ch. 298. (Sec. 111.86, as amended by A.B. 475, L. 1971, effective May 1, 1972).
>
> Sec. 111.87. Mediation. – The board may appoint any competent, impartial, disinterested person to act as mediator in any labor dispute either upon its own initiative or upon the request of one of the parties to the dispute. It is the function of such mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the commission shall have any power of compulsion in mediation proceedings. (Sec. 111.87, as amended by A.B. 475, L. 1971, effective May 1, 1972).
>
> Sec. 111.88. Fact Finding. – (1) If a dispute has not been settled after a reasonable period of negotiation and after the settlement procedures, if any, established by the parties have been exhausted, the representative, which has either been certified by the commission after an election, or has been duly recognized by the employer, as the exclusive representative of employees in an appropriate collective bargaining unit, and the employer, its officers and agents, after a reasonable period of negotiation, are deadlocked with respect to any dispute existing between them arising in the collective bargaining process, the parties jointly, may petition the commission in writing, to initiate fact finding under this section, and to make recommendations to resolve the deadlock. . . .[34]
>
> (5) Within 30 days of the receipt of the fact finder's recommendations or within such time period as is mutually agreed upon by the parties, each party shall advise each other, in writing, as to his acceptance or rejection, in whole or in part, of the fact finder's recommendations and, at the same time, send a copy of such notification to the commission at its Madison office. Failure

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[33] Bureau of National Affairs, Inc., "Rhode Island Teachers' Bargaining Rights," *Labor Relations Reporter, State Labor Laws*, Washington, D.C., 20037, (July 30, 1973), SLL No. 364, 50:242 e, 242 f.

[34] Bureau of National Affairs, Inc., "Wisconsin Employment Relations: State Employees," *Labor Relations Reporter, State Labor Laws*, Washington, D.C., 20037, (December 11, 1972), SLL 60:242g, 242h.

TABLE 7
STATE PROVISIONS FOR IMPASSE RESOLUTION IN NEGOTIATIONS

Mediation	Mediation and Fact Finding		Arbitration		Arbitration Mandatory
	Non-binding	Binding	Non-binding	Binding	
Alaska	Delaware	Hawaii	Connecticut	Hawaii	
Connecticut	Idaho	Maine	Massachusetts	Maine	
Maryland	Indiana	Nevada			
Rhode Island	Michigan	Oregon			
	New Jersey				
	New York				
	North Dakota				
	Pennsylvania				
	Vermont				
	Wisconsin				

TABLE 7—cont.

Permissive	Fact Finding Panel	Mutually Agreed Procedure	No Specific Provision
Massachusetts	Montana	South Dakota	California
Minnesota	Nebraska		Kansas
Nevada	Oklahoma		
New York	Rhode Island (Ad hoc)		
Oregon	Washington (Ad hoc)		
Pennsylvania			

to comply with this subsection, by the state employer or employee representative constitutes a violation of Sec. 111.84(1) (d) or (2) (c). (Sec. 111.88, as amended by A.B. 475, L. 1971, effective May 1, 1972).[35]

Hawaii, Maine, Nevada and Oregon require that certain cases of fact finding be binding on both parties. The Governor of Nevada has emergency power and authority to make recommendations of the fact finder final and binding:

> . . . 7. If the parties do not mutually agree to make the findings and recommendations of the fact finders final and binding, the governor shall have the emergency power and authority, at the request of either party and prior to the submission of the dispute to fact finding, to order prior to April 1 that the findings and recommendations on all or any specified issues of a fact finder in a particular dispute will be final and binding. The exercise of this authority by the governor shall be made on a case by case consideration and shall be made on the basis of his evaluation regarding the overall best interests of the state and all its citizens, the potential fiscal impact both within and outside the political subdivision, as well as any danger to the safety of the people of the state or a political subdivision.[36]

Connecticut explicitly defines the limitations on decisions of arbitrators: "The decision of the arbitrators shall be advisory and shall not be binding upon the parties to the dispute."[37] By consent, arbitration may be binding in Hawaii and Maine.

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[35] Ibid.

[36] Bureau of National Affairs, Inc., Nevada, op. cit., SLL No. 377, 33:231.

Strikes

Four states provide the statutory right to strike: Hawaii, Minnesota, Oregon and Pennsylvania. In each case the strike is authorized only after the full measures of the law in employee-employer relations have been expended. Even then the Pennsylvania statute reserves the denial of a strike if it creates a "clear and present danger" to the public:

> Section 1003. If a strike by public employees occurs after the collective bargaining processes set forth in sections 801 and 802 of Article VIII of this act have been completely utilized and exhausted, it shall not be prohibited unless or until such a strike creates a clear and present danger or threat to the health, safety or welfare of the public. In such cases the public employer shall initiate, in the court of common pleas of the jurisdiction where such strike occurs, an action for equitable relief including but not limited to appropriate injunctions and shall be entitled to such relief if the court finds that the strike creates a clear and present danger or threat to the health, safety or welfare of the public. If the strike involves Commonwealth employees, the chief legal officer of the public employer or the Attorney General where required by law shall institute an action for equitable relief in the court of common pleas of the jurisdiction where the strike has occurred or the Commonwealth Court. Prior to the filing of any complaint in equity under the provisions of this section the moving party shall serve upon the defendant a copy of said complaint as provided for in the Pennsylvania Rules of Civil Procedure applicable to such actions. Hearings shall be required before relief is granted under the section and notices of the same shall be served in the manner required for the original process with a duty imposed upon the court to hold such hearings forthwith.[38]

Nineteen states prohibit strikes and twelve states provide specific penalties for violators. Penalties range from loss of check-off in Delaware to a jail sentence in South Dakota. Specific penalties are identified in Table 8.

Final Form of Agreement

Eighteen states require that negotiations be finalized by a written agreement, four of which also include a maximum time limitation. Results of negotiations must be given to the public in Alaska. Table 9 shows that 7 states have no provision for final form.

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[37] Bureau of National Affairs, Inc., "Connecticut Teachers: Right to Organize and Bargain Collectively," *Labor Relations Reporter, State Labor Laws*, Washington, D.C., 20037, (July 30, 1973), SLL No. 364, 16:261.

[38] Educators Negotiating Service, Pennsylvania Public Employee Relations Act, Educational Service Bureau, Washington, D.C., 20006, (September 1, 1970).

TABLE 8

STRIKE PROVISIONS CONTAINED IN STATE NEGOTIATIONS LAWS

Legal	Injunction	Prohibited Penalties Specified	Penalty	No Penalty	No Specific Provision
Hawaii	Vermont	Delaware	Loss of check-off	Connecticut	Alaska
Minnesota (non-essential employees		Indiana	Loss of pay while striking, no check-off	Kansas	California
Oregon		Iowa	Fine, jail, loss of job	Maine	Idaho
Pennsylvania		Maryland	Loss of check-off and representation	Massachusetts	Nebraska
		Michigan	May lose position	Rhode Island	New Jersey
		Montana	Suspension or dismissal	Wisconsin	Washington
		Nevada	Employee dismissal or suspension Organization—$50,000/day; Officer—$1,000/day	New Hampshire	
		New York	2 times daily rate of pay, one year probation		
		North Dakota	Loss of pay during strike		
		Oklahoma	Loss of pay during strike, representation		
		South Dakota	Fine, $1,000, one year jail term, Organization not to exceed $50,000		

Table 9

STATUTORY REQUIREMENTS CONCERNING FINAL FORM OF NEGOTIATED AGREEMENT

Written Contract	Time Limitation	Public Meeting	Not Specified
Connecticut	Kansas (3 years)	Alaska	California
Hawaii	Maine (3 years)		Delaware
Maine	Montana (2 years)		Idaho
Maryland	Rhode Island (3 years)		Indiana
Massachusetts	Wisconsin (1 year)		Oklahoma
Minnesota			South Dakota
Montana			Washington
Nebraska			
Nevada			
New Jersey			
New York			
North Dakota			
Oregon			
Pennsylvania			
Rhode Island			
Vermont			
Wisconsin			

V. The Alabama Environment: Its Implications For Professional Negotiations

The legalistic base for public employee bargaining in Alabama is anchored by a 1964 decision of the State's Supreme Court. In *International Union of Operating Engineers, Local 321 v. Water Works Board of the City of Birmingham*, the Court ruled that in the absence of legislative or constitutional authority a public agency may not legally bargain a contract with a labor union on wages, hours and conditions of employment.[1] This ruling continues as a decisive factor since the Solomon Act was struck down by Judge Roy Mayfall in the Madison County Circuit Court, June 15, 1972.[2] Section 2 of the now defunct Solomon Act stated:

> Any public employee who joins or participates in a labor union or labor organization, or who remains a member of, or continues to participate in, a labor union or labor organization thirty days after the effective date of this act, shall forfeit all rights afforded him under the State Merit System, employment rights, and other rights, benefits, or privileges which he enjoys as a result of his public employment.[3]

Part of Judge Mayfall's findings of fact in the case included:

> . . . The presence of the Solomon Act hanging over the heads of public employees in Alabama deprives those employees of rights guaranteed in our Constitution to assemble to petition their government and to associate with whom they please. . . .

Though the law was declared unconstitutional in 1972 and expired in January, 1973 for lack of appeal, the memory and the spirit lingers. In gathering data for this chapter, a few instances were found where officials were unaware of its demise. Though teachers, municipal employers, dock workers and others were exempt from the Solomon Act, no apparent gains for teachers were erased by Mayfall's decision.

In 1957 Attorney General John Patterson ruled, "cities may not, in the absence of constitutional or statutory authority recognize unions and enter into a contract with it."[4] He also ruled, "where union membership of city employees is not prohibited, cities may deduct dues from (an) employee's wages at his expense, upon receiving voluntary written authority of employee."[5] These same two issues are the focus of recent important decisions.

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[1] *Alabama Reports*, 276 Alabama 462 163 So. 2d 619 (1964).

[2] *Alabama Labor Council v. Frazier*, No. 29, 375, (1972).

[3] Code of Alabama (Title 55, State, Sec. 317, 1953 Cumulative to Co. 8. Act. No. 720, Acts 1953, House Bill, 231, approved September 17, 1953).

[4] Bureau of National Affairs, Inc., "Union Membership in Public Employment," 9/18/72, Code of Alabama, *Labor Relations Reporter, State Labor Laws*, (1940), SLL 10:275,276.

In the absence of a law against bargaining, unions are challenging public authorities for check-offs, recognition and bargaining rights. The Laborers International Union bargained the only formal public agreement in the state with the City Council of Fairfield on Monday, October 15, 1973.[6] Newspaper reports during the 13 weeks' strike listed recognition of the union and dues check-off as important demands of the employees.[7] Throughout this chapter the incidents previously cited will play an influential role.

With this legalistic base established, a study of the environmental climate for bargaining was conducted through numerous and at times lengthy interviews. The nature of this study dictated the use of some form of free response interrogation. The interview method was chosen in anticipation of finding and eliciting subsurface or indepth data.[8] The determination of specific organizations to question was made on the basis of extensive involvement in employer-employee relations. Questions asked appear as Appendix A.

The structured interview was designed to ascertain the current status of collective bargaining in Alabama. The instrument contained an initial all-encompassing question, "From your organization's viewpoint, where do professional negotiations or collective bargaining stand in the state of Alabama?" Analysis of the responses was facilitated by grouping the respondents into classifications as follows: Business and Industrial, Public Non-Educational, and Public Educational. Further delineation of Employer and Employee inputs facilitated singular as well as comparative analysis.

Business and Industrial

Statements from two state organizations indicate the dichotomous positions of business and labor. The Alabama Chamber of Commerce (C. of C.) Executive Director viewed the labor legislative status of the state as attractive for industrial expansion. When companies explore location and relocation possibilities in Alabama they ask about such things as sites, tax laws and a right-to-work law. The right-to-work stipulation is considered a big-plus in attracting business since Alabama is competing against the other Southeastern States.[9] On the other hand the President of the Alabama American Federation of Labor Congress of Industrial Organizations (AFL CIO) stated, "There's not one law on the books in Alabama conducive to bargaining. But every month we organize some kind of union. The stranglehold has been broken and we're organizing at a very healthy pace with the fastest growth in the area 50 miles North and South of Montgomery."[10]

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[5] Ibid.

[6] *The Birmingham News*, October 17, 1973.

[7] *The Birmingham News*, August 21, 1973 and October 12, 1973.

[8] David J. Fox, *The Research Process in Education*, (New York: Holt, Rinehart and Winston, Inc., 1969), p. 537.

The spokesman from the Associated Industries of Alabama (AIA) estimated that the problems that the North and the rest of the nation have had in labor relations will arrive in the South about ten years later. He further stated that the same struggle and confrontation that labor and management evidently must enact before sufficient maturation is gained to stabilize the relationship will undoubtedly evolve in Alabama.[11]

When questioned as to the identification of significant forces opposing a public bargaining law the Chairman of the Business and Labor Committee of the Alabama Senate, the Honorable Richard C. Shelby, named the Associated Industries of Alabama, among others, and the textile industries in particular.[12]

Both the unions and the AIA agree that the state level of Alabama private sector bargaining is at approximately 21.5% of the non-agricultural working force.[13] (Statistics of this type are difficult to acquire in Alabama.) The non-agricultural work force of 1,279,100 in December 1973 as released by the Alabama Department of Industrial Relations multiplied by the mutually agreed 21.5% – results in an estimated 275,000 unionized workers bargaining in the state.[14]. If the 275,000 figure is representative, then unions in the private sector in Alabama have grown at the annual rate of 6.9% since 1970. The Alabama Labor Council offered only the 1970 Census findings of 228,000 labor union members.[15] The differential of 47,000 represents a three year increase of 20.6%. In a right-to-work law state this is healthy growth. The postage meter slogan on the envelope from the Alabama Labor Council states "Alabama, Most Unionized State in the Southeast" may be tied to the estimated group-a-month pace revealed by the President of the Alabama Labor Council in November, 1973. These figures may be interpreted to include a growth rate of over 1,000 members per month.

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[9] Interview (phone) with Executive Director, Alabama Chamber of Commerce, Montgomery, Alabama, March 6, 1974.

[10] Interview with President, Alabama AFL CIO Labor Council, Headquarters, Birmingham, Alabama, October 25, 1973.

[11] Interview (phone) with Executive Director, Associated Industries of Alabama, Birmingham, Alabama, November 14, 1973.

[12] Interview (phone) with the Honorable Richard C. Shelby, State Senator, Tuscaloosa, Alabama, March 7, 1974.

[13] Interview with Executive Director, Associated Industries of Alabama, Birmingham, Alabama, November 14, 1973 verified by phone call to Alabama Labor Council AFL CIO, Birmingham, March 7, 1974.

[14] Alabama Labor Market, Department of Industrial Relations, Montgomery, Alabama, January, 1974.

[15] AFL CIO Labor Council, Phone call, Birmingham, Alabama, March 7, 1974.

The continued industrial growth of the state will no doubt be accompanied by the growth of labor unions. Thompson suggests that further progress in developing the state's economy may be dependent upon upgrading wage and occupation levels by inducing the expansion and recruitment "of firms with a high-wage, high-skill employment base."[16] This type of worker will rely on more effective and sophisticated representation.

More pressure for a public employee bargaining law will possibly mount as the state labor-management environment in the private sector changes. Lieberman noted that public bargaining laws exist in those areas where the climate for the process has existed for some time in the private sector.[17]

Representatives of management in industry feel certain that the people of Alabama are against a law permitting public employee bargaining. The Alabama Chamber of Commerce surveyed its members in 1973 as to their position on bargaining in the public sector: with 16% of their membership of 3,000 responding, an "overwhelming majority were opposed."[18] The Associated Industries of Alabama had no data but felt that the majority of the people were against it.[19] If the AIA stand in other states is any indication their opposition will grow stronger as the moment of decision by the Alabama Legislature gets closer. In Florida the Associated Industries fought public employee bargaining as an "infesting cancer."[20] In

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[16] Arthur A. Thompson, "Manufacturing Expansion in Alabama, 1960-1971," *Alabama Business*, Center for Business and Economic Research, Graduate School of Business, Tuscaloosa, Alabama, University of Alabama, September 15, 1972, p. 6.

[17] Myron Lieberman, "Negotiations, Past, Present and Future," *School Management*, May 1973, p. 5.

[18] Interview (phone) with Executive Director, Alabama Chamber of Commerce, Montgomery, Alabama (March, 1974).

[19] Interview (phone) with Executive Director, A.I.A., Birmingham, Alabama, November 14, 1973.

[20] Wayne J. Urban, "Ideology and Power in the Florida Teacher Walkout." Speech presented to Southeastern Philosophy of Education Society, Gainesville, Florida, February 11, 1972.

Kentucky the President of Associated Industries is among the most formidable opponents of proposed legislation, citing increased government cost and taxation, and the potential loss of sovereignty by governmental bodies.[21] As previously mentioned the textile interests within AIA were identified among those in strong opposition.[22]

Closely allied to textiles is the apparel industry. Thompson noted in 1972:

> The textile, apparel and primary metals industries form the core of the employment base of Alabama's manufacturing economy, although apparel has been the only one of the big three to contribute much to the new thrust in manufacturing employment in the state since 1960. . . . (449 new plants and expansions).[23]

Though the rate of growth for other industries had been vigorous it would behoove proponents of public employee legislation for bargaining to study carefully the attitudes and tactics of textile and apparel interests during subsequent sessions of the legislature. Because of their ability to locate and expand in the state, their influence within AIA and the Alabama Chamber of Commerce may be increasing.

Though both the AIA and the Chamber of Commerce are convinced that the public also opposes public bargaining legislation each offered opinions on alternatives within a bargaining law for teachers. Neither would include teachers and their supervisors in the same bargaining unit. If a law is passed both would recommend a separate law for teachers.

The union leaders are confident that the public's attitude has changed in the past five years. Grievance procedures and "memos of understanding" now exist in many forms and areas. Though data were not available, the International Representative of the Laborers International Union estimated that at least 30% of the non-school public employees in Alabama had one or both of the two processes aforementioned, and that the grievance procedure is the more prevalent. He saw no need for adept politicians to hide their faces in supporting public employee bargaining. Further, the public is beginning to realize that the public employees have been and continue to be the forgotten group. He opposed a separate law for teachers because "there interests are no different."[24]

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[21] Radio Station WHAS, "Public Employee Bargaining — A Blessing or a Curse." Louisville, Kentucky, February, 1974.

[22] Interview (phone) with the chairman Business and Labor Committee, Alabama Senate, The Honorable Richard C. Shelby, Tuscaloosa, Alabama, March 7, 1974.

[23] Arthur A. Thompson, op. cit., p. 1.

The President of the Alabama Labor Council also feels that a public employee bargaining law is closer to actualization now than even three years ago. As more industrialization in the state develops, more workers of all types will organize, especially in the rural areas. Counties are now competing against cities and other counties for industrial development, whereas the cities have leveled off in industrial growth. He went on to say that union growth is in those areas where it was formerly impossible to break the stranglehold against organizing. Furthermore, the upward trend of union membership and the improved organizing climate since the nullification of the Solomon Act in 1972 were influential in the Alabama Labor Council's testifying in behalf of a stronger public employee bargaining bill in 1973 than in 1971.[25] The Alabama Labor Council President believes a separate law for teachers is not needed.

Summary

The business and industrial organizations interviewed have and will continue to oppose a public employee bargaining law. Competition from the other Southeastern states for the location and expansion of industry from other sections of the country has influenced business and industry to take actions and promote policies which discourage private and public employee bargaining. At the same time labor representatives sense the inevitable passage of a bargaining law for public employees.

Public Non-Educational

As of January, 1974, there were 164,000 state and local governmental employees in Alabama, of which 79,500 were "non-school."[26] In testimony given before the Alabama Senate Business and Labor Committee in June, 1973, the President of the Alabama AFL/CIO Labor Council stated,

> About 15,000 to 16,000 state, county and municipal workers in Alabama belong to unions today, several thousand more are in the organizational stages and, no doubt, many more will decide to go union in the future.[27]

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[24] Interview (phone) with International Representative, International Laborers Union, Birmingham, Alabama, November 20, 1973.

[25] Interview with President, Alabama Labor Council, Birmingham, Alabama, October 25, 1973.

[26] Ibid.

[27] President, Alabama AFL/CIO Labor Council, testimony presented to Alabama Senate Business and Labor Committee, Montgomery, Alabama, June 6, 1973.

In addition, the Alabama State Employees' Association had a membership of 10,854 in November, 1973,[28] which includes civil service employees for all state agencies. The union and association figures of 16,000 and 10,854 combined, equal 26,854 or approximately 30% of the November, 1973 non-school total of 86,000.[29] Together the two organizations, local and state government employees, could present a formidable nucleus for bargaining, but their philosophies differ widely.

The purpose of the Alabama State Employees Association is:

> . . . social and literary advancement, social fellowship and companionship among its members, promoted by contact with each other, and to this end to furnish a place where meetings may be held, where questions of the day may be discussed. . . .[30]

In the preamble of the *Constitution and By-Laws of the Alabama Labor Council* AFL CIO a paragraph states:

> We pledge ourselves to the more effective organization of working men and women; to the securing to them of full recognition and enjoyment of the rights to which they are justly entitled; to the achievement of ever higher standards of living and working conditions; to the attainment of security for all the people; to the enjoyment of the leisure which their labor makes possible; and to the strengthening and extension of our way of life and the fundamental freedoms which are the basis of our democratic society.[31]

The unions are committed to collective bargaining and the association opts for the civil service system. Thus far the Board of Directors of the Alabama State Employees' Association (SEA) has opposed collective bargaining,[32] and union response to this stand is one of amazement, bordering on disbelief.[33]

The SEA is part of a federation, known as the Assembly of Governmental Employees (AGE), of more than 500,000 state, county and city public employees in 34 states. AGE maintains:

> AGE and its affiliates grew out of the unique requirements of employees

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[28] Interview (phone) with Executive Director, Alabama State Employees Association, Montgomery, Alabama, November 14, 1973.

[29] *Alabama Labor Market*, Department of Industrial Relations, State of Alabama, Montgomery, November 1973.

[30] Alabama State Employees' Association, "The Constitution of the Alabama State Employees Association," as amended December 11, 1971, Montgomery, Alabama.

[31] Alabama Labor Council (AFL CIO), *Constitution and By-Laws of the Alabama Labor Council*, AFL CIO, Birmingham, Alabama, 1972.

[32] Interview (phone) with the Executive Director, Alabama State Employees' Association, Montgomery, Alabama, November 14, 1973.

[33] Interview (phone) with the International Representative, Laborer's International Union, Birmingham, Alabama, November 20, 1973.

> in the public service. Its tactics are in sharp contrast with unions that grew up in industry and merely are seeking to implant industrial union techniques in the public sector.
>
> Independents believe in the merit system – that selection and promotion be based on merit as demonstrated by competitive examination. Unions seek to furnish public employees through the industrial hiring hall technique.
>
> Independents are guided by policies conceived and executed at the local level. Union policies often are set by international councils.[34]

So long as the Alabama State Employees' Association holds a position of opposing a public employee bargaining law, neither the union nor the association will exercise an inordinate amount of pressure on the legislature. Support of the SEA position by governmental leaders tends to keep the union position neutralized.

Among the best organized and most forceful organizations opposing bargaining for public employees is the Alabama League of Municipalities (ALM). Led by a forceful director and providing continuous and effective service for its 337 active members (1973), ALM may be the most formidable opponent of a public bargaining law in the state.[35]

The ALM adopted the following resolution in April, 1972:

> That the League continues to favor fair, uniform and equal treatment of all public employees and inasmuch as the public policy of this State, since its admission to the Union in 1819, with respect to collective bargaining, has remained firm and unchanged, any legislation changing this policy should first be submitted to a vote of the people of this State. The League continues in its opposition to any legislation which would give any group of public employees special or favored treatment, the effect of which treatment would be to discriminate against other public employees.[36]

In a letter to its members the Director recommended:

> Further, due to the multitude of different jurisdictions and conditions to be considered our policy calls for a thorough study of the question by an Interim Legislative Study Committee prior to adoption of legislation on this subject.[37]

The Chairman of the Committee on Municipal Government and Administration of the ALM testified against the proposed legislation in the 1973 session of the legislature. His summary of testimony concluded that until the legislature provides some authorization for bargaining, communities will rely on the decision in the Birmingham Water Works case and resist the process.[38]

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[34] Assembly of Government Employees, "A Belief in the Merit System," Washington, D.C.

[35] John Watkins, ed., *Alabama Municipal Journal*, Alabama League of Municipalities, Montgomery, Alabama, July 1973, p. 3.

[36] *Alabama Municipal Journal*, Alabama League of Municipalities, May 1972, p. 24.

[37] Alabama League of Municipalities, internal communication, Executive Director to Municipal Officials, Montgomery, Alabama, November 8, 1973.

In testimony presented to the Senate Business and Labor Committee on June 5, 1973, the Mayor of Opelika recounted numerous incidents which were disruptive to community services and safety during a strike by public employees in the winter of 1972-73. He included the league's position in part of his summary:

> If this issue was put before the citizens in the towns and cities of Alabama, the people in a large majority of these communities would say "NO." In Opelika they would say "No!" by a pretty big majority . . . and I believe the same thing would hold true in most of the towns and cities in Alabama. These people just do not want labor unions running their communities.[39]

Any attempt to pass legislation permitting public employee bargaining will meet with strong opposition from the ALM. Senator Richard C. Shelby, Chairman of the Alabama Senate Business and Labor Committee, singled out numerous opponents who testified against Senate Bill 361 in 1973, the only public bargaining bill to be reported out of committee. Among the best organized and most forceful opponents was the ALM.[40]

An attempt was made in this study to establish the status of public employee-employer relations in Alabama municipalities by writing to six mayors and superintendents of schools in selected highly industrialized cities. The questionnaire will appear as Appendix B. To protect their anonymity neither the cities nor the officials were identified. It was hoped that information would be obtained that otherwise would not have been given on identification. Phone calls were necessary to complete the survey. One city official said that community services depreciated when they tried to do what was right by the workers.[41] Another felt that a bargaining law was not needed when you have a civil service system.[42] A recurrent comment by a city official that transcended public agency lines was that if management or officials abdicate their sovereignty, in effect the employee organization has the power to set the tax rate.[43]

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[38] Interview (personal) with Chairman of the Committee on Municipal Government and Administration, Alabama League of Municipalities, Auburn, Alabama, November 8, 1973.

[39] Lewis Cooper, Mayor of Opelika, "When Unions Try to Run Your City," *Alabama Municipal Journal*, July 1973, p. 5.

[40] Interview (phone) with The Honorable Richard C. Shelby, State Senator, 11th District, Tuscaloosa, Alabama, March 7, 1974.

[41] Interview (phone) with City Officials of a Selected Industrialized City, March 6, 1974.

[42] Interview (phone) with City Official of a Selected Industrialized City, March 4, 1974.

The International Representative of the Laborer's International Union suggested that the trend in public employee bargaining is upward. He classed the public employee as the "forgotten" with low wages and "hardly any" fringe benefits. His estimate that 30% of the public employees have some form of communicating procedure with employers such as "grievance procedures" or "memos of understanding" is, in his opinion, conservative. Confident that state and local governmental employees will organize and not be at the mercy of politicians; others will follow the progress now being made among maintenance workers, drivers, laborers, civil engineers.[44]

Three recent opinions of the Attorney General of Alabama, the Honorable William J. Baxley, relate to the public non-educational environment.

First, on August 3, 1973 in a letter to the Honorable Henry B. Gray, III, Administrator of the Alcoholic Beverage Control (ABC) Board the Attorney General responding to the question of legality of: (a) the recognition of a labor union by the ABC Board, (b) whether strikes and picketing by ABC employees, he stated:

> It is the opinion of this office that the ABC Board may recognize a duly formed and representative group of ABC workers as a labor union. . . . On June 15, 1972, Circuit Judge Ray Mayhall, in Case No. 29,375 in the Court of Equity of Madison County held the Solomon Act unconstitutional. . . . Judge Mayhall's opinion, in effect sanctions the formation of public employee unions. . . .
>
> In a case decided on May 10, 1973, the Alabama Supreme Court affirmed an opinion by Judge Newton B. Powell of the Morgan County Circuit Court in which Judge Powell recognized that public employees do not have the right to strike. *Nichols v. Bolding*, 8 Sup. Ct. 119 and 119 X (1973). Judge Powell further held that public agencies have no right to enter into collective bargaining agreements with public employees in the absence of a statute giving them the authority to do so. There is no statute in Alabama granting such authority to the ABC Board. Justice Jones, writing for a majority of the Supreme Court, said that the decision of Judge Powell was "correct in every respect." Chief Justice Heflin filed a learned and reasoned dissent in the *Nichols* case and was joined in that dissent by Justice Maddox. We have no alternative, however in light of the majority opinion in *Nichols* except to rule that strikes by ABC employees are not legal. . . .
>
> It would certainly not be illegal for ABC workers to picket so long as the picketing was done in their off-hours, did not interfere with the right of passage

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[43] Interview (phone) with Official of a Selected Industrialized City, March 6, 1974.

[44] Interview (phone) with International Representative, Laborers International Union, Birmingham, Alabama, November 20, 1973.

to and from ABC stores or to and from State offices. The picketing could not be violent or forceful and could not restrain other States workers from going about their business. The picketing could not block traffic or in any other manner impede the free flow of people in and around State offices. The First Amendment of the United States Constitution protects such picketing conducted in a lawful manner. *Employees I.A. vs. Greenwood*, 30 So. 2d 696, 705, cert. den. 332 U.S. 847 (1948). The Alabama Supreme Court has often recognized that "peaceful picketing cannot be restrained." *United Steelworkers of America vs. Alabaster Lime Company*, 242 So. 2d 658, Page 660 (1970).[15]

Second, and perhaps more far-reaching is an opinion of the Attorney General in the labor dispute between the Sanitation Workers Union and the Fairfield City Council on October 15, 1973. This opinion is of such importance that the entire letter will appear as Appendix B in this study. The major factors in this opinion were in response to requests for interpretation as to the legality of (a) dues check-off, (b) whether union members are classified and hired through the Personnel Board of Jefferson County, (c) whether the Mayor may enter into a contract with regard to wages, hours and working conditions with city employees. In the order requested, the Attorney General replied:

> . . . The City of Fairfield had previously requested an opinion on the check-off of Union dues on September 11, 1973. . . . We replied to Mr. Hardy that the City of Fairfield has the right to check-off Union dues. . . .
>
> You seem to be concerned about whether or not the employees are classified employees hired through the Personnel Board of Jefferson County. We do not see that it makes any conceivable difference whether the Union members are classified or unclassified. . . .
>
> . . . The Supreme Court of Alabama, in two recent decisions, have held that public agencies cannot enter into binding bargaining agreements, with Union members. See *International Union of Operating Engineers vs. Water Works Board of City of Birmingham* 276 Ala. 402, 463, 163, So. 2d 619 and *Nichols vs. Bolding* 277 So. 2d 863. These cases hold that the public agencies can enter into such agreements only where they have express constitutional or legislative authority to do so. This does not mean that the Mayor and the City Council cannot meet and confer with members of the Sanitation Workers Union. It does not mean that agreements cannot be reached and carried out as a result of such meetings.
>
> It does not effect the power of the City of Fairfield to participate in a dues check-off. The city, in its discretion, may participate in the check-off. The Supreme Court decisions merely say that bargaining agreements reached between public agencies and public employees Unions are not enforceable in a court of law. In other words, the agreement would be terminable at will by the city or the Union members.
>
> It is our recommendation that the City of Fairfield enter negotiations with the Sanitation Workers Union, and that the city bargain with the Union in

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[15] Attorney General's Opinion, State of Alabama, Montgomery, Alabama, August 3, 1973.

> good faith. As a result of such bargaining, the city should carry out any agreement with the Union that is within the power of the city. Even though such an agreement might not be binding in court, it is incumbent upon government officials at this time in our history to grant to public employees the same rights and freedom granted to Union members in the private sector.
>
> In summary, it is our opinion: 1) that the city may, in its discretion check-off Union dues; b) that the Mayor and City Council may bargain with Union members; however, any agreement reached as a result of such bargaining is not legally binding on either party.[46]

Third, on February 5, 1974 the Attorney General responded to a request for an opinion from a City Councilman of Anniston, the Honorable Jim Byrd. After answering several questions concerning the city employees rights to establish a union and the right to request the city to recognize the union in the affirmative, the Attorney General further clarified the question of the union's right to bargain with city officials and city official's right to bargain with unions. Citing the *Nichols* and the *Water Works Board* cases the opinion said:

> . . . These cases indicate that public agencies cannot enter into binding bargaining agreements with union members. This does not mean that the Mayor and City Council cannot meet and confer with members of a public employee union. It does not mean that City officials cannot reach agreements with members of public employee unions. . . . The Supreme Court does say that bargaining agreements reached by the public agencies and public employees' unions are not enforceable in a court of law. In other words, the agreement would be terminable at will by the City or union members.[47]

Officials interviewed from two highly industrialized cities relied on the fact that Personnel Boards had been established to administer the civil service system, therefore they felt no need for a bargaining law. The State Employees Association (SEA) has opted to support the civil service system and to pursue the legislative route for whatever changes may be needed. The opinion of the Attorney General in the Fairfield case on classification and hiring by the Personnel Board may shake the stability of support for the civil service system by members of the SEA as well as undermine the reliance of municipal officials on the creation and operation of Personnel Boards. The estimated 59,000 non-school state and local employees who are neither union nor SEA members will follow the progress of employee organization under both bargaining and civil service models.

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[46] Attorney General's Opinion, State of Alabama, Montgomery, Alabama, October 15, 1973.

[47] Attorney General's Opinion, State of Alabama, Montgomery, Alabama, February 5, 1974.

City officials interviewed varied in their predictions as to whether or when a public bargaining bill will be passed. One mayor said 1975 will bring the passage of a law while most felt it was coming but was at least a few years away.

The Executive Director of the ALM was opposed to a separate law for teachers or for any other special group.[48] The chairman of the Committee on Municipal Government and Administration of the ALM favored a "meet and discuss" type of law but preferred that if a law passed, employees in the critical services should be under a separate law.[49] All of the city officials interviewed believed that the majority of Alabamians are against a public bargaining law.

Public Educational

As stated in Chapter I, teachers have led the surge in public employee bargaining since 1962. The Alabama Education Association (AEA), an organization of teachers and administrators, passed resolutions in its Delegate Assembly in consecutive years supporting a negotiations law for teachers. Similar resolutions passed in 1973 and 1974:

> 74-54 PROFESSIONAL NEGOTIATIONS
>
> AEA supports the principle of negotiations with governing boards of school systems and institutions and will support acceptable Legislation in this area. Any Legislation to be supported by AEA must provide the following: (A) All professional personnel must be included in a single bargaining unit. (B) Provision must be made for resolving impasse in negotiations by a three-member committee, one appointed by the local school board or institution, one by the negotiating unit, and a third being mutually agreed upon by the board and the negotiating unit. The decision of this panel will be the negotiating unit. The decision of this panel will be final providing such decision does not violate the Fletcher Budget Act.[50]

The Executive Secretary of the AEA stated that court action or a statute would eventually have to fill the void now existent and the nebulous area of employer-employee relations where the state law is silent permits groups to organize and probe their public employers as to what their legal rights are.[51]

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[48] Interview (phone) with Executive Director, ALM, Montgomery, Alabama, November 9, 1973.

[49] Interview with Chairman of the Committee on Municipal Government and Administration, Alabama League of Municipalities, Auburn, Alabama, November 8, 1973.

[50] *Alabama School Journal*, Alabama Education Association, December 15, 1973, p. 8.

[51] Interview (personal) with Executive Director, Alabama Education Association, Montgomery, Alabama, November 12, 1973.

AEA local associations are at different levels of sophistication throughout the state – from little or no involvement to almost total sharing in the decision-making process. The employee has whatever rights the public employer is willing to grant him or that he seizes. Among teachers groups, Birmingham, Demopolis, Gadsden, Huntsville, Jefferson County and others are most active, but the fact still remains court action or statute is necessary to end the confusion.[52]

With its 33,725 members the AEA has become the single most powerful public employee group in the state,[53] which contains teachers and administrators, and superintendents and principals comprise a decided minority. Whether the AEA membership of teachers and administrators can resolve their philosophic differences may yet decide whether a negotiations law is possible in the next session of the legislature. To explain, teachers in AEA have favored the passage of a law for over a year, but both the President[54] and President-Elect[55] of the Alabama Association of School Administrators (AASA) have opposed the passage of a law. The Executive Director of the Alabama Department of Elementary School Principals (ADESP) felt that most of their members would oppose a law but deferred a final statement pending the development of a position paper by the organization.[56] Likewise the President of the Alabama Association of Secondary School Principals (AASSP) expressed a probability of opposition by a majority of the state's secondary principals.[57] Of the three administrative groups (AASA, ADESP, AASSP) only the AASA has taken a stand against a professional negotiations law for teachers. This may change to include all three in opposition. At the AASA meeting held in conjunction with the annual AEA convention in Birmingham on Wednesday, March 13, 1974, President Oscar Zeanah was credited by *The Birmingham News* as saying:

that if a negotiations bill is passed in the Legislature "this might be the time

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[52] Ibid.

[53] Paul R. Hubbert, "The Status of the Profession," a speech delivered to the Delegate Assembly, Alabama Education Association, Mobile, Alabama, February 1, 1974, p. 1.

[54] Interview (personal) with the President of the Alabama Association of School Administrators, Andalusia, Alabama, November 2, 1973.

[55] Interview (personal) with the President-Elect of the Alabama Association of School Administrators, Auburn, Alabama, October 31, 1973.

[56] Interview with Executive Director, Department of Alabama, Elementary School Principals, Spring Meeting, Auburn, Alabama, January 18, 1974.

[57] Interview with the President of the Alabama Association of Secondary School Principals, during annual meeting of the Delegate Assembly, Alabama Education Association, Mobile, Alabama, January 31, 1974.

> when we should get out of AEA, carry as many teachers as possible with us, and form another organization.[58]

The President-Elect, Dr. Wayne Teague, was quoted by the same newspaper:

> While we as school administrators are striving to maintain one organization for all, others are striving equally as hard to drive the wedge of distrust and misrepresentation between teachers and administrators.[59]

Closely related to the superintendents in both policy and position is the Alabama Association of School Boards. At the time the Executive Director presented his testimony to the Alabama Senate Committee on Business and Labor on June 5, 1973 the Association enrolled 106 of the 126 local school boards in Alabama, with 85% of the state's public school students under their jurisdiction.[60] The Association's official policy making body, the Delegate Assembly, adopted the following resolution on February 3, 1973:

> The Alabama Association of School Boards is opposed to any legislation that would require or permit collective bargaining by public employees in the State of Alabama and most especially to bills that provide for arbitration of disputes.[61]

The President of the local chapter of the American Association of University Professors at the University of Alabama testified before the Senate Business and Labor Committee last summer in support of a substitute bill for S.B. 361. As the unofficial spokesman for the statewide organization, the University of Alabama law professor urged the passage of a public bargaining bill.[62]

Purported spokesmen for teachers in public schools from the elementary through the university levels manifest support for a professional negotiations law. Principals' organizations representing elementary and secondary personnel have not taken official stands. The President of the Alabama Association of Secondary School Principals (AASSP) felt that a negotiations act will come some day though the majority may not favor its passage now.[63] Elementary principals are developing organizational position papers on negotiations, partly relying on a companion study to this one.[64] Superintendents and school boards oppose a negotiations law. Two problematical questions seek workable answers from the AEA if it is to remain a powerful united force on teacher welfare matters:

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[58] "Administrators Threaten Rift in AEA," *The Birmingham News*, Thursday, March 14, 1974.

[59] Ibid.

[60] Interview with Executive Director, Alabama Association of School Boards, Tuscaloosa, Alabama, November 5, 1973.

[61] Testimony by Executive Director, Alabama Association of School Boards to Alabama Senate committee on Business and Labor, Montgomery, Alabama, June 5, 1973, p. 2.

[62] Interview (phone) with President, American Association of University Professors, University of Alabama Chapter, Tuscaloosa, Alabama, March 6, 1974.

1. Will the principals join the teacher or board-superintendent camp if a show-down develops?
2. Can the superintendents and principals remain in the AEA if a negotiations law is passed?

Dr. Paul Hubbert, Executive Director of AEA, indicated a belief that a plan unique to Alabama could be devised which would give teachers real input but would not be "obnoxious" to the administrators.[65]

Precedent in many state laws as revealed in Chapter III forced some or all administrators to withdraw from the teacher organizations. Senate Bill 361, the only piece of proposed bargaining legislation to be reported out of committee in the 1973 session of the Alabama Legislature, would have disallowed administrators at or above the level of assistant superintendent to be represented in the bargaining unit.[66]

The activist, politically-potent AEA is exerting strong influence on state leaders if recent statements of three state leaders at their annual convention in Birmingham, March 14, 1974 are an indication. Governor George Wallace pledged support for legislation which would give teachers a "voice in the decision-making process.[67] Further, the Governor pledged the use of $200,000,000 in the Special Education Trust Fund to increase teacher salaries, reduce class size and provide other benefits.[68] Attorney General William Baxley and Lieutenant Governor Jere Beasley supported actions to provide more involvement for teachers in matters of conditions of employment and setting policy.[69]

Six superintendents of schools in highly industrialized cities in Alabama were interviewed for the purpose of establishing the nature and condition of the climate for negotiations in those municipalities. Three questions were asked of each:

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[63] Interview with President, Alabama Association of Secondary School Principals, Mobile, Alabama, January 31, 1974.

[64] Interview with Executive Director, Department of Alabama Elementary Principals, Auburn, Alabama, January 18, 1974.

[65] Garland Reeves, "Will Administrators' Group Pull Out Eventually from the AEA?" *The Birmingham News*, March 17, 1974, p. 2B.

[66] S.B. 361, Alabama State Senate, Montgomery, Alabama, June 6, 1973.

[67] Reeves, op. cit.

[68] Ibid.

[69] Ibid.

1. What operational influences or difficulties has your agency had as the result of attempts to organize your employees?
2. Is there any noticeable progress being made by public employees in their attempts to bargain?
3. Do you foresee a public employee bargaining law in Alabama? If so, in what form?

Five of the six thought that little influence and minor difficulties were felt by their offices as the result of employee attempts to organize. One superintendent experienced the organization of part of his non-instructional staff. Various attempts have been made to organize employees in each of the districts over the past ten years.

Five of the superintendents or their representatives expressed opinions that progress is being made by public employees in gaining bargaining rights. For one, the pressure comes in spurts, then subsides with no noticeable progress. The majority believes that public employees will gain the right to bargain.

One thought that a bargaining law was not needed but may be passed by politicians as an "apparatus to get more votes."[70] "Yes, it's coming, maybe in 1975, we should employ somebody to analyze the situation so we can learn from others," said a superintendent who thought it inevitable that a law would be passed.[71] All but one thought that if a law were passed teachers would be separated from other public employees. Though most pronouncements from the AASA oppose a professional negotiations law, as do these superintendents, most are resigned to the inevitability of its arrival in some form.[72]

Summary

Among educators, teachers are advocates for a negotiations statute while administrators and board members oppose. Spokesmen for municipal governments oppose a public bargaining law as do spokesmen for business and industrial organizations. Municipal employees are split on their positions.

As was stated in Chapter I, the teachers will seek to negotiate with the public body holding legal authority and control of finances. Implications of the financial environment in Alabama may well help to determine whether or not a negotiations law will be passed and if so, in its best form.

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[70] Interview with Superintendent, Highly Industrialized City, Alabama, February 4, 1974.

[71] Interview with Superintendent, Highly Industrialized City, Alabama, March 1, 1974.

[72] Interview with Superintendent, Highly Industrialized City, Alabama, March 1, 1974.

THE ALABAMA SCHOOL FINANCIAL ENVIRONMENT

What are the implications of the financial environment of the state for professional negotiations? A study of legal status and statistical data provides interesting nesting possibilities for teacher bargaining.

In a 1953 amendment to the Alabama Constitution the following was added, in part:

> and on or before October first of each year each county and each city board of education shall prepare and submit to the state superintendent of education the annual budget to be adopted by each such county and each such city board of education, which budget shall be prepared and submitted according to the classifications and items specified on forms provided therefor and in accordance with the regulations of the state board of education, *and no county or city board of education, or superintendent thereof, shall approve any budget for operation of the school for any fiscal year which shall show expenditures in excess of income estimated to be available by the various state and other officials as required* in sections 238 and 239 of this title plus any balances on hand, except under conditions set forth by the laws of the state governing the issuance of school warrants. (1939, p. 610; 1953, p. 126, S 1, appvd. June 15, 1953).[73]

School districts may not present a deficit budget to the state. Further, if a school district presents a legitimate budget which is approved by the state superintendent of education and subsequently exceeds the limits the following provision is applicable:

> *If a county or city board of education in any fiscal year violates the provisions of this section, the state board of education shall reduce in the succeeding fiscal year the allotment from the minimum program fund to which such county or city board of education is otherwise entitled in an amount equal to one-fourth of said deficit.* If any county or city superintendent at any time makes a financial statement to his board of education or to the state superintendent of education in which said superintendent purposely misrepresents the amount of the deficit or obligations outstanding of his board of education, he shall be guilty of a misdemeanor and punishable by a fine of not less than one hundred dollars and not more than five hundred dollars. (1939, p. 610)[74]

Regardless of the source of the funds – local, state, or federal – the state must be involved in all matters that affect school finances. Most bargaining begins with a scope of "wages, hours and conditions of employment." Even if some of the local districts choose to remunerate teachers at higher rates than others the state becomes involved through: (1) approving the process as being within the codes, and (2) establishing levels of state support. It would appear that most fiscal issues would be bargained at the state level because laws practically mandate the reliance for funding by most school districts on the state.

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[73] Code of Alabama, Recompiled, 1958: (The Michie Co., 1960), p. 99.

[74] Ibid.

Alabama's Financing of the Schools

The state of Alabama's Minimum Program Law of 1935 and amended in 1939 incorporates factors of local ability to share with the state in contributing to the support of the minimum program. The intent of the law is to place responsibility on local school units according to their ability to pay.

According to the Alabama Education Association pamphlet "ABC's of the Alabama Minimum Program"[75] the first measure is the Assessed Valuation Index which establishes the percentage of assessed valuation of the state total found in a county. Since counties vary in their method of making assessments, the state has added measures for equalization. Six factors that indicate the economic health of the county are given weighted and percentage values as follows:

Index of Economic Ability

Sales Tax	x 6 =	35%
Automotive Licenses	x 5 =	29%
Assessed Valuation of Public Utilities	x 3 =	18%
Personal State Income Tax	x 1 =	1%
Value added by Manufacturing	x 1 =	1%
Value of Farm Products	x 1 =	1%
		100%[76]

Each of the factors in each county is figured as to its percentage of the state total; then multiplied by its weighted value. When divided by the total factors (17), the result equals the share of the state wealth in that county as measured by the six factors.

The Alabama code[77] states "multiply one-half of one percent by the total assessed valuation of the state on which taxes are collectable." The county's percentage of the state wealth is then divided into the resulting figure. The local county's contribution to the minimum program fund has been calculated.

Another source of school district revenue is the Public School Fund. The Public School Fund is disbursed on a per capita basis

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[75] Alabama Education Association, *ABC's of the Alabama Minimum Program*, Montgomery, Alabama, 1972, p. 12.

[76] Ibid., p. 3.

[77] Ibid., p. 3.

– "x" number of dollars for each child as determined by the school census.

The funding places only that level of responsibility on the local districts as their percent of the state's wealth allows. Any leeway monies beyond this percentage level must be procured from additional local revenue initiative.

It has been shown that funding is based on state standards – it will also be shown that the state has assumed the major portion of the responsibility for funding education.

That Alabama's funding program is in tune with trends on the national level may be verified by statements made by the National Educational Finance Project:

> The higher the percentage of school revenues provided by the state, the greater the equalization of financial resources among districts.[78]

Another principle from the same study notes,

> The higher the percentage of state funds provided in relation to local revenue, the greater the progressivity of the tax structure for school support. State tax sources are generally more progressive than local tax sources.[79]

The American Educational Research Association's *Encyclopedia of Educational Research* pointed to the fact that property taxes are less favorable than other types as school revenue sources:

> Peterson (Peterson & others, 1963) claimed that while no single measure of wealth currently in use is adequate, income is preferable to property as a measure of the ability to pay taxes.
>
> Davis (1963) found that when he held property values constant for counties in California, personal income tended to be higher in urban counties and lower in rural counties and higher in older communities and lower in new communities. Thus, he found that the standard foundation program using property valuation creates a disadvantage for rural areas and new suburban areas, since their taxpaying ability is overstated, thereby reducing state subsidies below the level they might have achieved. He further noted however, that when income taxes constitute a significant factor in the accumulation of funds for state subsidies, this inequity is probably reduced.[80]

Alabama's minimal reliance on property taxes may be a fortuitous decision in light of challenges to their use nationwide.

Though writers encourage increased state funding for education there has been little percentage change in state revenues for education over the past 20 years. From 1930 to 1949 they increased from 17.3% to 39.8%; in 1970 they were at 40.7. Three states – Delaware, New Hampshire and Wyoming – lowered their percent of revenues between 1929 and 1970.[81] Alabama's state-level contribution, however, in 1971-72 was 61.4%.[82]

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[78] U.S. Department of Health, Education and Welfare, "Future Directions for School Financing," (National Educational Finance Project: Gainesville, Florida, 1971), p. 55.

[79] Ibid.

[80] *Encyclopedia of Educational Research*, edited by Robert Ebel, A Project of the American Educational Research Association (Toronto, Canada: The Macmillan Co., 1969), pp. 508-509.

The high level of state contribution indicates that if a professional negotiations law is passed, such items as salary and fringe benefits may for the most part be bargained statewide, coupled with the fact that state approval on all budgets is necessary prior to implementation.

Level of State and Local Support Related to Bargaining

In the 1971-72 school year no county school system in Alabama received less than 42.7% of its revenues from the state. Greene County received 42.7%; 14 other counties received from 53.5% to 59.5%; the other 52 counties received 60% or more. Autauga and Etowah Counties state contributions reached 74.8%[83]

State (61.4%) and federal (18.6%) sources equalled 80% of total revenues in the state for 1971-72. Considering that the state is the agency for disbursing most federal funds, local school districts are heavily reliant on the state. If decision-making is tied to funding, 3 school districts contribute less than 5% of their revenues from local sources – Barbour County (4.6%), Geneva County (4.6%) and Wilcox County (3.8%).[84]

If a negotiations law is passed, this would mean that the state would permit itself to be obligated to salary contracts bargained by the 26 counties which contribute less than 10% of their total revenues. Local contribution statewide was 20%.[85]

Expenditures for instruction in cities average 83.38%. Anniston spent the lowest at 73.81% and Vestavia Hills was highest at 88.48%. In the county systems the average was 80.36% with Dale County lowest at 69.81% and Montgomery County highest at 85.64%. Statewide the average was 81.46%.[86] Instruction is by far the dominant expenditure in Alabama Schools considering funds under direct state jurisdiction. *If bargaining would begin and salaries are settled at*

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[81] U.S. Dept. of Health, Education and Welfare, "Status and Impact of Educational Finance Programs" (Gainesville, Florida, 1971), p. 23.

[82] Alabama Education Association, Montgomery, Alabama, 1973. (Compiled from 1971-72 "Annual Report.")

[83] Ibid.

[84] Ibid.

[85] Ibid.

[86] Ibid.

the state level the major portion of instructional costs will have been committed.

Consideration of city school districts and their sources of revenue were saved until last because they provide the most likely environment for bargaining on both the local and state level. Several categories have been established;

Type I: Cities which raise 45% or more of total revenues at the local level:

Homewood	84.3%
Mt. Brook	51.1%
Vestavia Hills	45.0%[87]

Type II: Cities which raise more than 30% but less than 45% of total revenues at the local level:

Sheffield	34.2%
Muscle Shoals	31.4%
Tarrant	31.9%[88]

Type III: Cities which raise at least 25.6% (the state average for cities), but less than 30% and receive less than 60% from the state:

Athens	29.3%	56.3%
Opelika	28.9%	47.0%
Oxford	28.7%	53.8%
Florence	28.0%	56.0%
Andalusia	27.9%	54.0%
Birmingham	27.7%	57.6%
Cullman City	26.6%	57.5%
Tuscaloosa City	26.6%	58.5%

(Applying these standards to counties we would include: Colbert (31.7%, 53.9%), Jefferson (25.8%, 53.5%) and Mobile (26.8%, 58.8%.)[89]

We would expect local initiative to be so active as to demand participation in decision-making in Type I cities, regardless of the issue, if it involved major expenditures. Teachers in schools in Type I cities face problems of a different nature than those in schools with less local initiative. Parents and teachers in school districts of this type demand the highest quality education.

Type II cities also have sufficient wealth to cause higher than average local contribution to their budgets, hence local concern for that wealth would also create interest in the results of bargaining

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[87] Ibid.

[88] Ibid.

[89] Ibid.

Likewise teachers in those districts would pressure for improved conditions.

Type III cities (and counties) also include favored wealth status, making them potential areas for pressures from teachers for better than average salaries and working conditions.

The Outlook

Revenues for schools in Alabama are derived from numerous sources. Following are the varied taxes which contribute directly either to the Public School Fund or the Special Educational Trust Fund:

Alcoholic Beverage Tax
Chain Store Tax
Corporation Income Tax
Electric and Hydro-Electric Utilities Tax
Express Companies Tax
General Property Tax
Individual Income Tax
Insurance Companies Tax
Lease Tax
Lodgings Tax
Railroad Tax
Sales Tax
Severance Tax
Telephone and Telegraph Companies Tax
Tobacco Stamp and Use Tax
Use Tax
Utility Tax[90]

The annual business and industrial activity and growth are tied directly to revenues available to schools. The combination listed above produced a surplus of between 70 and 80 million dollars in the last biennium, according to unofficial data from the State Department of Education. The two preceding biennial budgets have been exceeded by collections. Continued expansion of the state's economy will reap additional funds for schools. How fast is Alabama's economy growing?

The average annual growth of personal income in the Southeast between 1962 and 1972 was 9.2%.[91] Alabama's growth was approximately 7.5% per year. In 1929 the Southeast had 22% of the nation's population and about 12% of its personal income. In 1972 the population percentage has decreased slightly to 21%+ but the personal income increased to 18%. Earnings by industry are expected to more than double between 1969 and 1990 in manufacturing, wholesale and trade, services, government and others.[92] The growth rate of Alabama's per capita personal income has been exceeded by only 7 other states in the ten years from 1961-71.[93]

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[90] Alabama Chamber of Commerce, "1972 Alabama Tax Facts" (Montgomery, Alabama, 1972), pp. 2-31.

[91] The Conference Board, "Personal Income by Region and State," Road Maps of Industry, No. 1723, (New York: October 1, 1973).

Has the increased growth in income been reflected in commensurate increases in expenditures in education?

In the ten years 1962-1972 Alabama increased its expenditure per pupil in average daily attendance by 139.8% which ranks 22nd in the U.S. growth. From 1962-1972 Alabama increased its instructional staff salaries 101.5% which ranks 3rd in the U.S. in that time span. Between 1971-72 and 1972-73 Alabama increased its salaries by 4.8% which ranks 19th for the U.S. in percent increase for that year.[94] Yet in estimated average salaries of instructional staff in public schools for 1972-73 the state average of $8262 stands no better than 44th in the U.S.[95]

From the data thus far presented it appears that Alabama is growing at a rapid rate, that it is making lengthy strides in funding at the state level, and that more effort than has been previously expended may be necessary, to make progress. But, local support remains noticeably weak; as noted, only 20% of the 1971-72 revenues were raised locally. In 1970-71 the per capita local tax collections total in the state was $71 which stood 49th in the nation, only $2 more than the lowest. Of the 12 Southeastern states this figure ranked 11th.[96]

Local governmental units may not be in a position to improve their collections materially because of the distribution of income. Total personal income in the state in 1971 was $10,765,000,000 which ranks 25th nationally, but the per capita personal income was only $3,087, 48th in ranking.[97] It is apparent to the Alabama Education Association that more leeway money (local revenue above the minimum effort) is necessary, for "these are the funds that will allow the enrichment of educational opportunity."[98]

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[92] The Conference Board, "Regional Output, Earnings and Employment," Road Maps of Industry, No. 1724 (New York: October 15, 1973).

[93] Alabama Education Association, "Where Alabama Stands 1973," (Montgomery, Alabama, May 1973), p. 7.

[94] Ibid., p. 6.

[95] Ibid.

[96] Ibid., p. 9.

[97] Ibid., p. 7.

[98] Alabama Education Association, ABC's, op. cit., p. 18.

The Alabama Department of Education has projected per capita expenditures through 1979 for Alabama, the Southeast and the Nation. In 1973 the per capita expenditure (using ADA) for elementary and secondary education was $578. Each year the amount was projected to increase by $35 so that in 1979 the amount is projected to be $798. In the Southeast the figure is $634 (Alabama's amount is 91.2% of the Southeast's). Each year's increase is projected at $30 to reach $814 in 1979 (Alabama's figure will be 98% of the Southeast's). At the same time the national figure is projected to rise from $1,006 in 1973 (Alabama's amount is 57.8% of the Nation's) to $1,468 when Alabama's percentage will have decreased to 54.4% because the national rate of increase is $77.[99]

Conclusion

Whether or not professional negotiations come to Alabama, [illegible] financial environment provides opportunities for the betterment [illegible] Alabama's public schools. Biennial surpluses attest to the ability of state leaders to provide for educational needs as presented. The very broad tax base on the state level is a commendable approach to a difficult problem. By data presented in this study vast financial benefits to education from Alabama's continued rapid economic growth have been projected. Whether educators and government will induce vastly increased local effort is problematical. Whether professional negotiations will evolve as part of the involvement of educators in presenting programs to the citizens of Alabama to improve their schools for their children is also not clear. The resources appear to be increasingly more available. What is needed is strong and capable leadership in the educational community. This may be provided with or without professional negotiations.

Johns and Morphet state that

> Finance is a powerful instrument, which may be used to facilitate or to retard the development of education. The amount of money provided, the purposes for which it may be used, and the conditions that must be observed in spending the funds greatly influence the kind and quality of education found in the public schools and other educational institutions.[100]

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[99] Alabama State Department of Education, "An Analysis of the Enrollment, State Appropriations and Per Capita Expenditures for Elementary and Secondary Education and Post Secondary Education, 1968-1979," A Working Paper, Montgomery, Alabama: Division of Departmental Services, Office of Planning and Evaluation, February 14, 1973, p. 26.

[100] Roe L. Johns and Edgar L. Morphet, *The Economics and Financing of Education,* (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 2nd ed., 1969), p. 235.

VI. Summary, Conclusions and Recommendations

SUMMARY

The organization of this study provided the design for the summary, conclusions and recommendations. The introduction of the study established certain reasons for the movement to organize public employees and expressed the need for information for decision-making in Alabama. A review of related literature of the historic and philosophic development provided the broader milieu into which the survey of the 31 statutes was considered. The environment of the State of Alabama as it relates to professional negotiations was characterized from data contained in the first three chapters. Conclusions and a recommended alternative to a negotiations law were presented along with a model negotiations law for consideration when the Alabama environment is more receptive to the enactment of such a law.

CONCLUSIONS

The findings of this study based on the review of related literature, the analyses of important elements of the existent 31 state statutes, the investigation of the unique environment of the State of Alabama as it applies to negotiations presented evidence to support certain logical conclusions:

1. Some form of public employee bargaining is inevitable in the State of Alabama; yet the time has not come, in the frame of reference of Victor Hugo.

2. Many of the causes of teacher militancy listed in Chapter I also exist in the State of Alabama. In addition, the teachers have learned to organize locally, regionally and statewide, and to use their unified political force to be recognized by the true power center, the public and the legislature.

3. Intense rivalry between the Alabama Education Association (AEA) and the American Federation of Teachers (AFT) does not exist on a large scale in Alabama.

4. The level of success of private sector employee organizations in Alabama is rising but is in the early developmental stages.

5. Public employees in Alabama have had the legal right to join labor organizations or employee associations since January 15, 1973, resulting from the decision of Judge Mayhall in the *Alabama Labor Council v. Frazier* case.

6. Numerous options exist for Alabama within the structure of the statutes of 31 states in preparing a model for public employees in general as well as professional public school employees in par-

ticular. Each option ultimately selected should serve the unique needs of Alabama's public employees.

7. The 1964 decision of the Alabama Supreme Court is the most significant legalistic base relative to bargaining between public employees-employers in Alabama. By ruling that a public agency may not bargain a contract with a labor union on wages, hours and conditions of employment, the Court has stated that legislation is necessary to allow bargaining.

8. Private sector employer organizations such as the Associated Industries of Alabama and the Alabama Chamber of Commerce oppose any type of public employee bargaining law because they must compete against other Southeastern States for the attraction of industry. They also oppose a separate negotiations law from teachers because it would open the door through precedent for other employee groups.

9. As Alabama becomes more industrialized, membership in labor unions will increase.

10. Leaders of the governmental employees group, such as the State Employees Association, oppose a public bargaining law and will make it more difficult for employee groups to unify any effort to secure a bargaining law.

11. Mayors and local governmental leaders will oppose legislative proposals for public employee bargaining. Their statewide organization, the Alabama League of Municipalities, has been and will continue to be strongly opposed to any effort to permit public employee bargaining.

12. As individuals, most public officials believe tha[illegible]w is inevitable, but differ with regard to the length of time [illegible] such a law is enacted in Alabama.

13. Recent opinions by the Attorney General of the State of Alabama, the Honorable William J. Baxley, declaring that public employers may reach agreements with public employees but that the agreements are not enforceable in a court of law, will cause employee groups to press for agreements.

14. The Alabama Education Association (AEA) has achieved significant political power and will support and promote legislation to permit public school personnel to negotiate with their governing boards. Further, if a professional negotiations law is not passed the AEA will become increasingly militant unless some alternative is implemented.

15. The AEA has worked for unified membership among teachers, administrators and boards and will be responsive to reasonable alternatives.

16. Administrators are in an awkward situation as AEA members in opposing a professional negotiations law. Alternative solutions to this dichotomous condition have been discussed but, as yet, none is acceptable. Superintendents in other states have been placed in positions whereby their objectives differ from those of teachers. Both teachers and administrators need an alternative plan.

17. Governing boards of school districts seek a solution of working with teachers and administrators without a professional negotiations law.

18. Alabama's Minimum Program Law and program for the funding of education encourage statewide negotiations on money items. Statewide minimum salary schedules could be negotiated.

19. Although the majority of the leaders interviewed privately expressed the opinion that eventually a public employee bargaining law will be passed, little is being done to prepare for the new process. Also, little is being done to study the choices available when the need for a law arises. It is possible that a federal public employee law will precede a state law, making understanding and preparation necessary.

20. An alternative to a professional negotiations law should be considered because the state lacks readiness for the implementation of such a law and there is insufficient support at this time for its passage.

21. A model professional negotiations law should be in readiness when the Alabama environment is such that a negotiations law will be passed.

RECOMMENDATIONS

1. It is recommended that an alternative program be enacted to provide lead time for preparation for the inevitable passage of a law and to promote employer-employee relationships more beneficial to children, teachers, administrators, parents, boards and the citizens of the state than could be gained under a negotiations law.

As was stated in Chapter IV, the data showed that the major portion of school finance in Alabama is raised on the state level. It would be feasible to negotiate on a state wide basis.

The resources and expertise of the AEA have been used to "negotiate" salary adjustments with the State Legislature. Gains have been dramatic in the last two bienniums, as was shown in Chapter IV. This viable political relationship could exist, *with or without the passage of a professional negotiations statute*. As indicated in Chapter IV, the Alabama design for financing its schools state wide is part of a nationwide trend.

Precedent for negotiations state wide has been established in Hawaii. Two clauses in the Hawaii statute give promise to state wide negotiations. The number of participants from each bargaining unit with over 2500 members shall be limited to one member from each 500 members of the bargaining unit.[1] "Cost items" includes wages, hours and other terms and conditions of employment, the implementation of which requires an appropriation by a legislative body.[2] Changing the numbers in the first clause could produce a workable teacher committee. Restricting the scope of state wide negotiations to "Cost items" is workable.

It is considered unnecessary at this time to introduce a state wide bargaining law. It is recommended that the AEA negotiate money items directly with the State Legislature as it has in the recent past.

But what of the "other terms and conditions of employment" which are so important to professionals such as teachers? The most viable alternative rests in the amendment of two sections of the Alabama Code:

Enrolled, An Act, to amend Title 52, Section 73 of the Code of Alabama of 1940; to provide that the county board of education shall adopt written policies with regard to education and to provide that such written policies shall be made available to all employees of the board. BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Title 52, Section 73 of the Code of Alabama of 1940, is hereby amended to read as follows: "Section 73. Educational Policy of the County. The county board of education shall, upon the written recommendation of the county superintendent of education, determine and establish a written educational policy for the county and shall prescribe rules and regulations for the conduct and management of the schools. Before adopting written policies the board SHALL directly, or indirectly through the superintendent, CONSULT with the professional organization representing the majority of the certified employees, and in addition shall also consult with professional assistants, principals, teachers, and interested citizens. The county board must, on or before August 1, 1974, establish such policies and adopt such rules and regulations and file them with the state superintendent of education on or before September 15, 1974. Such written policies, rules and regulations, so established, adopted, or promulgated shall be made available on or before September 15, 1974, to all teachers employed by the county board. Any subsequent amendments to such policies, rules and regulations shall be developed in the same manner, filed with the state superintendent and furnished to the teachers employed by the local board within twenty (20) days after adoption thereof.

Section 2. All laws or parts of laws in conflict herewith are hereby repealed.

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[1] Bureau of National Affairs, Hawaii, SLL 21:230; 21:225, No. 379.

[2] Ibid.

Section 3. This Act shall become effective upon its passage and approval by the Governor or upon its otherwise becoming a law.[3]

* * *

Enrolled, An Act, to amend Title 52, Section 166 of the Code of Alabama of 1940; to provide that the city board of education shall adopt written policies with regard to education; to provide that such written policies shall be made available to all teachers employed by the board; and to provide that such written policies and written amendments thereto shall be filed with the state superintendent of education. BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Title 52, Section 166 of the Code of Alabama of 1940 is hereby amended to read as follows: "Section 166. Control of city schools. The city board of education shall, upon the written recommendation of the city superintendent of education, determine and establish a written education policy for the city and shall prescribe rules and regulations for the conduct and management of the schools. Before adopting written policies the board shall directly, or indirectly through the superintendent, consult with the professional organization representing the majority of the certified employees, and in addition shall also consult with professional assistants, principals, teachers, and interested citizens. The city board must, on or before August 1, 1974, establish such policies and adopt such rules and regulations and file them with the state superintendent of education on or before September 15, 1974. Such written policies, rules and regulations, so established, adopted, or promulgated shall be made available on or before September 15, 1974, to all teachers employed by the city board. Any subsequent amendments to such policies, rules and regulations shall be developed in the same manner, filed with the state superintendent and furnished to the teachers employed by the local board within twenty (20) days after adoption thereof.

Section 2. All laws or parts of laws in conflict herewith are hereby repealed.

Section 3. This act shall become effective upon its passage and approval by the governor or upon its otherwise becoming a law.[4]

Specifically, four amendments should be made to the codes:

1. "Consult" should be changed to a "meet and discuss" negotiation type process.
2. Governing school boards or their representatives shall meet with leaders of professional employees associations on a biennial schedule.
3. Striking the word "indirectly" before "through the superintendent" would involve the superintendent or his representative in the process.
4. To establish a contract-like relationship to the written policies a grievance procedure with binding arbitration should be included.

This would guarantee dialogue and protect teacher input. Further, it would give the teachers of Alabama a powerful position in educational policies at every level.

Key to the success of the meet and discuss arrangement is the type and manner of grievance procedure. A four-step procedure is recommended:

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[3] Code of Alabama (Recompiled to 12/1973, Title 52 Sec. 73) pp. 31, 32.

[4] Code of Alabama (Title 52 Sec. 166) pp. 38, 39.

1. The first step to be at the building level.
2. The second step to move up to the superintendent of schools.
3. The third step to be handled by the governing board.
4. The fourth step is the submission of the dispute to binding arbitration.

The model for the fourth step should be taken from the pattern of the AEA resolution on negotiations impasse in Chapter IV. Provision must be made for orderly implementation of the fourth step in the grievance procedure by a three-member committee, one appointed by the local school board or institution, one by the employee organization, and a third being mutually agreed upon by the board and the employee organization. The decision of this panel will be final provided such decision does not violate the Fletcher Budget Act. It is recommended that the AEA forego their stand on the passage of a professional negotiations statute as their part of a compromise and the superintendents and school boards agree to the "meet and discuss" arrangement on policies with the four-step grievance procedure which would cover all written policies of the school district as they apply to school personnel.

The resultant actions will permit AEA to remain together as a unit of all professional employees; it will permit the AEA to continue to secure substantial gains for its members without arousing the opposition of other organizations in the state and more importantly it will provide for the teachers of Alabama more input on policy matters in every school district in Alabama than is the case elsewhere in the nation.

2. A model professional negotiations law which adapts itself to the unique environment of the State of Alabama as reflected in Chapter IV and which finds its genesis in the study of the related literature in Chapters II and III is hereby recommended, to be available when the climate for a professional negotiations law is more favorable, with the rationale for choosing each of the sections. The professional subjective judgment of the researcher backed by 13 years of direct involvement in meet and discuss and mandatory professional negotiations on both sides of the bargaining table has been incorporated when deemed appropriate. The entire law is included as Appendix C.

Section 1. Alabama Professional Negotiations Act; Purpose.—In order to promote the growth and development of education in Alabama which is essential to the welfare of its people, it is hereby declared to be the policy of the state to promote the improvement of personnel management and relations with professional employees within the public school districts of the state by providing a uniform basis for recognizing the right of public school professional employees to join organizations of their own choice.[5] The State of Alabama "has determined that the overall policy may best be accomplished by (1) granting to professional employees the right to organize and choose freely their representatives; (2) requiring public school employers to negotiate with professional employees organizations representing professional employees and to enter into written agreements evidencing the result of such negotiations; and (3) establishing procedures to provide for the protection of the rights of the public school professional employees, the public school employer and the public at large.[6]

The Nebraska section from which this introduction was modeled was clearly stated as to the preamble, the purpose of the act and the recognition that professional employees may join organizations of their own choice. A part of the Pennsylvania policy provides a continuous flow of action from choosing to join an organization in the Nebraska provision to organizing and choosing representatives; to requiring that school districts negotiate with representatives (27 states require this) and sign written agreements (17 of the 31 states mandate written agreements) and finally to protect the rights of all concerned in the negotiations process.

The Alabama environment is one with employer-employee limited knowledge of professional negotiations. The wording of "Section 1" is clear and progressive, in order.

Section 2. Professional Public School Employees; Participation. – Professional public school employees shall have the right to form, join, and participate in the activities of organizations of their choosing for the purpose of representation on all matters of employment relations, but no professional public school employee shall be compelled to join such an organization.[7]

Membership in the professional organization is on the basis of a right provided by law. This is a very general provision in language of the Nebraska statute which is permissive. It is simply and clearly stated. Nebraska's provisions are chosen because of their mild tone. Alabama's first negotiations law needs flexibility and simplicity.

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[5] Bureau of National Affairs, "Nebraska Teachers: Right to Bargain Collectively," *Labor Relations Reporter, State Labor Laws*, Washington, D.C., (May 1, 1972), SLL 37:225.

[6] Educators Negotiating Service, "Pennsylvania Public Employee Relations Act," Educational Service Bureau, Washington, D.C., 20006, September 1, 1970.

[7] Bureau of National Affairs, Nebraska, op. cit., SLL 37:225.

Section 3. Coverage: A professional public school employee means any professional employee of a school district, except the chief administrative officer.

Nine of the sixteen states which have separate laws for professional employees exclude the superintendent or chief administrative officer. The chief administrative officer is considered an executive representative of the governing board. It would be awkward for him to be with the professional employees representatives.

Section 4. Representation: When a majority of the professional employees in a school district have designated an educational organization of their own choosing to negotiate for them, the organization shall be recognized by the school board as the exclusive negotiating agent for all the professional staff, except the chief administrative officer. The membership of any such recognized educational organization shall be composed principally of those employed in the teaching profession in Alabama, and certificated by the Department of Education.[8]

Nothing in this section shall be construed to prevent certificated administrative personnel groups, including principals and assistant principals, from having the right to negotiate independently of the other professional personnel if they choose to do so as the result of a secret ballot. . . .[9]

Exclusive representation was the dominant pattern in state statutes as reflected by 26 of 31 states.

Since indecision exists as to which direction the principals will take, the Alaska clause which allows principals to go either with teachers or separately gives the principals and boards and superintendents an opportunity to isolate the administrative group, when they choose, without jeopardizing the rights and welfare of administrators or teachers.

Section 5. Administrative Agency: Alabama Education Employer-Employee Relations Commission.

(a) There is hereby created a commission to be known as the "education employer-employee relations commission," hereinafter called "the commission," which shall consist of three members, one to be appointed by the superintendent of public instruction, one by the governor, and one by the attorney general. The appointee of the superintendent of public instruction shall be the chairman of the commission. The members of the commission shall be persons experienced in educational activities. The original appointment by the superintendent of public instruction shall be for a term of three years. The original appointment by the governor shall be for a term of two years. The original appointment by the attorney general shall be for a term of one year. Their successors shall be appointed for terms of three years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. At all times, two members of the commission shall constitute a quorum.

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[8] Bureau of National Affairs, "Alaska Teachers: Right to Bargain Collectively." *Labor Relations Reporter, State Labor Laws*, Washington, D.C., (July 17, 1972), SLL 11:204.

[9] Ibid.

(b) Members of the commission shall receive compensation as established by enabling legislation for their attendance at regular or special meetings of the commission or in the performance of such duties as the commission may direct. In addition to such compensation, they shall receive an allowance for actual and necessary travel and subsistence expenses while performing commission functions away from their places of residence. Mediators and fact finders, appointed by the commission, including commission members when so serving, shall be reimbursed for expense and shall receive such compensation as the commission shall from time to time establish.[10]

The commission shall exercise those powers and perform those duties which are specifically provided for in this act.

The commission shall have authority from time to time to make, amend and rescind such rules and regulations, as may be necessary to carry out the provisions of this act. Such rules and regulations shall be effective upon publication in the manner which the commission shall prescribe.[11]

The commission shall establish after consulting representatives of teacher organizations and of governing boards, panels of qualified persons broadly representative of the public to be available to serve as mediators, fact finders and members of fact finding boards.[12]

Seventeen states placed the administrative responsibility in the hands of existing boards and commissions or those created for the public employees. Alabama would need enabling legislation to establish a commission because no agency now exists which is well suited to administer a law. The commission type agency could develop an executive and judicial process which would be more conducive to educational policies than private sector models. The field of public employee-employer relations is in need of experienced public sector mediators, fact finders and arbitrators. The development of officials who are knowledgeable in educational activities is important to the resolution of duties.

Section 6. Scope of negotiations: The employer and the exclusive representative shall meet at reasonable times, including meetings in advance of the employer's budget-making process, and shall negotiate in good faith with respect to wages, hours, and other terms and conditions of employment, and which are to be embodied in a written agreement, but such obligation does not compel either party to agree to a proposal or make a concession.[13]

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[10] Bureau of National Affairs, North Dakota, op. cit., SLL 44:223.

[11] Educators Negotiating Service, Pennsylvania, p. 3.

[12] Ibid.

The employer or the exclusive representative desiring to initiate negotiations shall notify the other in writing, setting forth the time and place of the meeting desired and generally the nature of the business to be discussed, and shall mail the notice by certified mail to the last known address of the other party sufficiently in advance of the meeting.[14]

The Hawaii statute is not unlike most statutory provisions on the scope of bargaining. Governing boards and chief administrative officers prefer the Pennsylvania model because it limits the negotiation process to exclude managerial policies. Teachers seek to negotiate most anything, claiming it as part of "working conditions." Most research says that the scope of negotiations should be developed without major restrictions. The relationship between the parties prior to negotiations will have an affect on the scope of negotiations.

Administrators and school boards seek to vastly restrict what is discussed at the table because some claim that teachers want to "take over" the profession. When the scope of negotiations are limited, the employee group will probe to grieve certain "gray" areas as a matter of course. The wording in this section allows for the natural evolvement of what should be negotiable in Alabama.

Section 7. Grievance Procedures. Governing boards shall negotiate written policies setting forth grievance procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions affecting them, provided that such grievance procedures shall be included in any agreement entered into between the governing boards and the representative organization. Such grievance procedures shall provide for binding arbitration as a means for resolving disputes.[15]

As noted in Chapter III, 14 state statutes mandate the inclusion of a grievance procedure as the judicial instrument for the interpretation, application or violation of the written agreement. Unless binding arbitration is required the parties may not respond to the task adequately in the first steps of the procedure. Each school district will be required to negotiate the type of procedure desired to resolve disputes. Three and four step plans are the most common. Unless binding arbitration is used in the grievance procedure the governing board has the decision-making power. Some boards would ignore most grievances and not be overly concerned if they were not forced to resolve disputes.

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[13] Bureau of National Affairs, "Hawaii Public Employees: Right to Bargain," *Labor Relations Reporter, State Labor Laws,* Washington, D.C., 21:231, No. 379.

[14] Ibid.

[15] Bureau of National Affairs, "New Jersey Employer-Employee Relations Act," *Labor Relations Reporter, State Labor Laws,* Washington, D.C., (February 4, 1974), No. 382, SLL 40:249.

Section 8. Impasse Resolution. Parties to the dispute pertaining to the interpretation of a professional negotiations agreement may agree in writing to have the commission or any other appointing agency serve as arbitrator or may designate any other competent, impartial and disinterested persons to so serve.[16]

Mediation. – The commission may appoint any competent, impartial, disinterested person to act as mediator in any dispute either upon its own initiative or upon the request of one of the parties to the dispute. It is the function of such mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute but neither the mediator nor the commission shall have any power of compulsion in mediation proceedings.[17]

Fact Finding. – If a dispute has not been settled after a reasonable period of negotiation and in no case to exceed sixty (60) calendar days, and after the settlement procedures, if any, established by the parties have been exhausted, the representative, which has either been certified by the commission after an election, or has been duly recognized by the employer, as the exclusive representative of employes in an appropriate negotiating unit, and the employer, its officers and agents, after a reasonable period of negotiation, are deadlocked with respect to any dispute existing between them arising in the negotiating process, the parties jointly, may petition the commission in writing, to initiate fact finding under this section, and to make recommendations to resolve the deadlock.[18]

If the parties do not mutually agree to make the findings and recommendations of the fact finder final and binding, the governor shall have the emergency power and authority, at the request of either party, after investigation, to order that the findings and recommendations on all or any specified issues of a fact finder in a particular dispute will be final and binding. The exercise of this authority by the governor shall be made on a case by case consideration and shall be made on the basis of his evaluation regarding the overall best interests of the state and all its citizens, the potential fiscal impact both within and outside the school district, as well as any danger to the safety of the people of the state or a subdivision.[19]

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[16] Bureau of National Affairs, "Wisconsin Bargaining: State Employees," *Labor Relations Reporter, State Labor Laws*, Washington, D.C., (December 11, 1972), SLL 60:242g, 242h.

[17] Ibid.

[18] Ibid.

The most common form of impasse resolution is the combination of mediation and fact finding as shown in Chapter III. Provisions in any Alabama professional negotiations statute should assure resolution of impasse. Any negotiations law in Alabama would not tolerate a strike against a school district by teachers. It is, therefore, mandatory that emergency powers be given to the executive branch of the state to assure resolution of impasse. The Nevada model assures resolution.

The model for impasse resolution included in Chapter IV which was adopted by the AEA in its Delegate Assembly may be acceptable as a concession to strong advocates of "local control." The problem with local "arbitrators" is that they are often only familiar with their own local experience.

Section 9. Unfair employer-employee practices. (a) A governing board or its agent may not (1) interfere, restrain or coerce an employee in the exercise of his rights; (2) dominate or interfere with the formation, existence or administration of an organization; (3) discriminate in regard to hire or tenure of employment or a term or condition of employment to encourage or discourage membership in an organization; (4) discharge or discriminate against an employee because he has signed or filed an affidavit, petition or complaint or given testimony, under this chapter; (5) refuse to negotiate in good faith with an organization which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative; (b) A labor or employee organization or his agents may not (1) restrain or coerce (A) an employee in the exercise of the rights guaranteed in this chapter, (B) a governing board in the selection of his representative for the purposes of negotiating or the adjustment of grievances; (2) refuse to negotiate in good faith with a governing body, if it has been designed in accordance with the provisions of this chapter as the exclusive representative of employees in an appropriate unit. . . .[20]

As explained in Chapter II unfair labor practices have been defined since the Wagner Act of 1935. The administrative agency must establish procedures for hearings on allegations and/or violations. Powers to order parties to carry out or discontinue must also be established. Penalties for violators would also follow.

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[19] Bureau of National Affairs, Nevada, op. cit., SLL 38:231.

[20] Bureau of National Affairs, Alaska, op. cit., SLL 11:212.

Section 10. Strikes. – It shall be unlawful for any school employee, school employee organization or any affiliate, including but not limited to state or national affiliates thereof, to take part in or assist in a strike against a school employer.

A school district shall not pay any school employee for any day when the school employee fails as a result of a strike to report for work as required by the school year calendar, and he shall be, fined an equal amount for each day missed.[21]

Since the governor would have emergency powers to order binding arbitration it would not be likely that strikes would occur. The withholding of a day's pay for each day missed due a strike is used by New York and Indiana, but New York adds a fine equal to the amount of each day's pay rate. Impasse which leads to strike is not always caused by the employee group. When an employee group considers its stand just and right it may decide to violate the law. Strikes of this type seem to happen, regardless of penalties, etc. The best method is to have effective impasse resolution methods in the law.

Section 11. Severability. If any provision of this act or the application thereof to any person or circumstance is invalid, such invalidity shall not affect the other provisions or applications of this act, which can be given effect without the invalid provision or application, and, to this end, the provisions of this act are declared to be severable.[22]

This provision is usually added to assure that if any part of the act is invalidated, the remainder may be administered and enforced. Nearly every provision will, at some time or other, be challenged. While the law is interpreted to adjust to the Alabama environment it can be strengthened by change without eliminating the total act.

Section 12. Effective Date: This law shall take effect on January 1, 1977.

Sufficient lead time should be provided to permit the development of expertise in negotiations. At this time there are few groups in the State of Alabama prepared for professional negotiations, yet when the need arises all concerned will learn very rapidly.

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[21] Bureau of National Affairs, Indiana, op. cit., SLL 24:146.

[22] Ibid., SLL 24:147.

3. Institutions of higher education should begin immediately to prepare teachers, administrators and school board members in the techniques and implications of professional negotiations.

4. The Alabama Association of School Boards and the Alabama Association of School Administrators should survey employer-employee relations among the non-instructional employees of the school systems to provide valid data for actions which would avoid future confrontation with that group.

5. It is recommended that representatives of business, education, government, industry and labor exchange information and meet in dialogue.

6. It is recommended that this study be the beginning or a "point of departure" for future studies, particularly to be commissioned by those in-house specialists who know and understand the Alabama environment intricately. As a non-resident of this state, it is hoped that this initial research will serve as the base for future research which will provide information for data-based decisions.

7. It is recommended that studies be commissioned to survey the status of bargaining in higher education in the United States and the environment for bargaining in higher education in Alabama since the president of the AAUP chapter in Tuscaloosa testified in 1973 in behalf of a public employee bargaining law.

VII. More Recent Developments On The Educational Scene

Interest and accompanying activity related to the issue of professional negotiations in public education increased markedly during the 1974-75 school year in Alabama. The impetus for such heightened interest among educators was due in large measure to the efforts of the Alabama Education Association to formulate and adopt an official association posture with respect to professional negotiations for the state's public education system.

The policymaking body of the AEA, the Assembly of Delegates, enacted a resolution in February, 1974, which endorsed the concept of professional negotiations for public education in Alabama. Following the action of the 1974 Delegates Assembly, the staff of the AEA, including the Executive Secretary, adopted a policy of advocacy regarding the proposed enactment of a state law requiring negotiations between school boards and educational employees. The major issue for AEA in 1974-75 became one of determining the official position of the association with respect to the sponsorship of state legislation to require negotiations in education.

The 1975 AEA Assembly of Delegates, conducted January 31-February 1, 1975, was charged with the responsibility for the formulation of the association's official policy regarding statutory mandates for professional negotiations. Thus the 1975 Assembly of Delegates was perceived as critical by both proponents and opponents of such state legislation. Resolution 75-43 specified that AEA would sponsor and support state legislation in the 1975 legislature requiring negotiations and binding arbitration for public education in Alabama. Wide publicity was given to resolution 75-43 and the implications for public education in Alabama were discussed in educational settings throughout the state.

Resolution 75-43, prepared by the Legislative Commission of AEA, read as follows:

> AEA supports the principle of negotiations with governing boards of school systems and institutions and is directed to develop, introduce, and support acceptable legislation in this area. Any legislation to be developed by AEA must provide the following: (A) All professional personnel except Superintendents and their assistants may be included in a single bargaining unit. Principals and Supervisors may: (1) Be a part of the teacher negotiating unit; or, (2) Choose to have their own negotiating unit; or, (3) Choose not to be a part of the negotiating process. Such decision shall be made by a majority vote of the principals and supervisors using secret ballots in each county and city school system. (B) The right to strike is forbidden, however, provision must be made for resolving impasse in negotiations by a three member committee, one appointed by the local school board or institution, one by the negotiating unit, and a third being mutually agreed upon by the board and the negotiating unit. The decision of this panel will be final providing such decision does not violate the Fletcher Budget Act.

Educational organizations in Alabama and their positional leaders became polarized with regard to the provisions of resolution 75-43. Vigorous, concerted opposition to the enactment of the resolution was generated by the Alabama Association of School Administrators through its 1974-75 president, Dr. Wayne Teague. A brochure containing the entire text of an address delivered by Dr. Teague at the annual summer conference of AASA on August 4, 1974 in Gulf Shores, Alabama, was given wide distribution to educators, legislators, and school reference groups throughout Alabama. Professional negotiations were deplored by Dr. Teague in his address as typified by the following quotations:

> "The possibility of a teacher negotiations law, in my opinion, is the biggest threat to public education that any of us have encountered."
>
> ". . . let's make sure that all educators in Alabama, and yes all legislators and citizens, know the facts about negotiation laws and their bad effects."

In full support of AASA's vehement opposition to any proposed legislation mandating negotiations in education were the Alabama Association of School Boards, Dr. Randy Quinn, Executive Secretary, and the Alabama Congress of Parents and Teachers, Mrs. Harry Nelson, Executive Secretary.

The Alabama Association of Classroom Teachers, the largest division of AEA, and the entire salaried staff of the AEA vigorously supported the provisions of resolution 75-43 and exerted concerted energy in an effort to secure its enactment. A pamphlet entitled "The Truth About Professional Negotiations" was prepared and circulated widely in Alabama by the Classroom Teachers Association. Typical of the contents of the pamphlet are the following quotations:

> "Professional negotiations does not mean strike! No one is asking for a law to legalize strikes or work halts. The proposed AEA resolution on professional negotiations contains a no strike clause. (a stiff penalty will be inserted into any legislation.)"
>
> "Professional negotiations does mean freedom from scare tactics and intimidation."

Prior to the 1975 Assembly of Delegates, a majority of local educational associations in Alabama, as affiliates of AEA, engaged in a formalized process of instructing their elected delegates regarding the issues and resolutions to be supported and opposed. At the invitation of numerous local associations, Dr. Wayne Teague, AASA President, and Dr. Paul Hubbard, Executive Secretary, AEA, debated the issues related to professional negotiations in education and the provisions of resolution 75-43. Articles supporting and opposing the proposed state legislation regarding professional negotiations appeared regularly in the Alabama School Journal (AEA Publication) prior to the 1975 Delegates Assembly.

tary and an annual dues structure of $50.000 per member. The like-

A guest editorial authored by Dr. Truman Pierce, Dean, School of Education, Auburn University, in which major philosophical and educational implications of professional negotiations were examined critically, was published in *The Birmingham News* on Thursday, January 30, 1975, one day prior to the 1975 AEA Assembly of Delegates. Data obtained through the research conducted by Mr. John Kupice and subsequently reported in the form of a doctoral dissertation provided one information base for the views expressed by Dr. Pierce in his timely and highly instructive editorial.

The foregoing activities and conditions support the contention that the issues inherent in resolution 75-43 generally were well understood by the delegates to the 1975 AEA Assembly of Delegates. The floor debate on resolution 75-43 was animated and heated exchanges occurred. Proponents of the resolution attempted unsuccessfully to obtain a secret ballot for determining its fate. Charges of delegate intimidation by administrators were heard frequently by those who opposed a standing vote on the issue at hand. Opponents of resolution 75-43 were successful in upholding the motion for a standing vote by AEA Uni-serve districts. By the narrow plurality of 9 votes, 337 for and 346 against, the 1975 Assembly of Delegates defeated resolution 75-43. Thus, for at least one year, the AEA would not officially support the legal institutionalization of an adversarial model for professional negotiations in Alabama public education.

As a result of his analysis of the Alabama environment relative to collective negotiations in the public sector, Mr. John Kupice concluded that the state of Alabama lacks a readiness for the enactment of a state law mandating professional negotiations for public education in the state. The action taken by the 1975 Assembly in rejecting the resolution calling for a state negotiations law lends credibility to the conclusion reached by Mr. Kupice.

Although the AEA's policymaking body officially refused to sanction a state collective bargaining law for education, there seems little or no hesitancy on the part of the delegates to support the enactment of state legislation designed to guarantee to teachers the right to participate in the development of policy at the local school district level.

A delegate representing the Gadsden Education Association, Ms. Janet Davis, submitted a resolution calling for state legislation to require local school boards to "meet and confer" with local educators in conducting the policy-making function. Copies of the resolution were distributed to the delegates during the registration period just prior to the Assembly's opening session. The "meet and confer" resolution came up for consideration by the Assembly on Saturday, February 1, 1975 and was worded as follows:

> "AEA believes that school boards and educators should meet and confer on all matters of mutual concern. These meetings should be more than just perfunctory – they should deal with issues about which teachers and principals are vitally concerned.
>
> They should result in cooperatively developed solutions which attack the problem at hand. These proposed solutions should be placed in writing and studied further by the board and teachers. Once agreed upon they become official policies not subject to change until done through the same process.
>
> While it is felt by A.E.A. that few boards would object to this procedure, it is recommended that the Legislature pass and AEA will develop proposed statutes to require any board which refuses to meet and confer with its teachers and principals to do so.

> Good faith efforts should be required of both the board and educators. Failure to meet when requested, or any action designed to thwart good faith efforts or to prohibit discussions by either the board or educators, should carry penalties of law."

The "meet and confer" resolution was adopted by the 1975 Assembly of Delegates with but token opposition noted.

With the adoption of the "meet and confer" resolution, the AEA created a potential base of support of significant proportions for the alternative to a state negotiations law as advocated by John Kupice as a result of his research effort. Mr. Kupice contends that the most appropriate course of action for Alabama would be to amend two sections of the existing Code of Alabama, Sections 73 and 166 of Title 52, thereby requiring local school boards to meet and confer with teachers prior to the adoption of educational policies. Further, the proposed amendments would require the development and implementation of a four-step grievance procedure in each local school system to deal with potential disputes resulting from the implementation of local school personnel policies.

There seems little doubt that efforts during the 1975 regular session of the Alabama Legislature to enact "meet and confer" legislation with added provisions for impasse resolution will meet with formidable opposition. The March 17, 1975, edition of the Birmingham News quoted Dr. Randy Quinn, Executive Secretary of the Alabama Association of School Boards as having said publicly that the AASB will fight any bill introduced in the 1975 state legislature which seeks to promote formal and institutionalized educational negotiations in any form. It is not unlikely that the Alabama Association of School Administrators also will oppose any legislation perceived as hazardous to the ultimate power and authority of local school boards and administrators. The rationale for such opposition implies that "meet and confer" statutes merely are points of departure leading ultimately to full blown bargaining legislation including binding arbitration.

The degree to which all educational personnel in Alabama will be guaranteed the right to participate in the development of educational policy and the extent to which collective bargaining will be institutionalized in Alabama public education are issues to be determined by the Alabama Legislature. Decisions made ultimately no doubt will depend in no small measure upon the political influence capability of the two opposing forces within the total educational "family" in Alabama.

Three recent events seem collectively to have reduced significantly the political power of the Alabama Education Association and its capability to influence legislation affecting education in Alabama. First, the advocacy position with respect to collective bargaining in Alabama education assumed by AEA's staff and officers was rejected by the 1975 AEA Assembly of Delegates. This action raises a politically potent question – who really speaks for the majority of Alabama's public educators? Second, organizational and financial steps have been implemented to combine into a single inclusive professional organization four constituent organizations as follows: The Alabama Department of Elementary School Principals, The Alabama Association of Secondary School Principals, The Department of Supervisors and Directors of Instruction, and the Alabama Association of School Administrators, commonly referred to as the superintendents' group. The new "umbrella" organization is known as the Alabama Council of School Administrators and Supervisors and effective July 1, 1975, will have a full time salaried Executive Secretary and an annual dues structure of $50.00 per member. The likelihood exists that substantial numbers, perhaps a majority, of the administrators and supervisors will withdraw from membership in the AEA as a result of the formation of a new association more representative of their collective interests and concerns. Third, additional local professional associations may be organized as alternatives to the local affiliates of AEA. Two such organizations are now in existence: The Huntsville Organization of Professional Educators, and The Alexander City Organization of Professional Educators. The new organization in Alexander City was organized in March of 1975 following the 1975 AEA Assembly of Delegates.

The foregoing events on the contemporary educational scene in Alabama indicate the emergence of a political balance of power the results of which are highly speculative. Irrespective of the decisions relating to collective bargaining in public education ultimately to be made by the Alabama Legislature, the State of Alabama enjoys currently an enviable position. The opportunity exists now to develop patterns and techniques of communication, cooperation, and shared decision-making among local school boards, administrators and teachers not available to those states in which adversarial models of bargaining in the public sector have been institutionalized by state law. The most appropriate course of action for Alabama should be determined only after informed participation by those responsible for the formulation and implementation of public educational policy.

VIII. A Comparison Between Private Sector And Public Sector Collective Bargaining And Its Effect On Public Policy

In sampling the Alabama Environment, Kupice explored in some detail the altitudinal dimensions relative to public employee bargaining in the private sector including both the industrial and business components. Further, he considered specifically the thinking of leadership personnel as reflective of the organizational positions in the non-educational public sector and in the educational component of the public setting. Kupice also focused in his analyses of existing state laws upon components of bargaining legislation as a basis for projecting a possible state law for Alabama. The material presented in this extending chapter will revisit some of these same areas but from a comparative analyses purpose.

The process of collective bargaining as commonly practiced in the private sector cannot be transplanted into the public sector, even though collective bargaining in both sectors have several common characteristics, e.g. activities during negotiations, recognition of exclusive bargaining agents, use of written agreements, etc. But distinct differences between these sectors cause insurmountable limitations in applying private sector collective bargaining to the public sector.[1] Now at a time when many states are developing or refining their state statutes and Congress is considering federal legislation, these differences must be dealt with effectively in public sector legislation if the public sector is going to avoid repeating the mistakes made in the private sector in the 1930's. To provide the understanding of these complex differences and possible problems forthcoming, this chapter will focus on the comparison between private sector and public sector collective bargaining and its effect on public policy.

Unique Characteristics of Public Employment

Before developing an appreciation for the differences in the public sector, one must understand the general framework of public employment. Clyde Summers has appropriately identified unique characteristics that provide the foundation for several of the limitations of public sector collective bargaining. First, he explains that the decision-making process is a political process. Although influenced by market forces, social influences, etc., the process largely remains political. Secondly, in ultimate political theory the public is the employer. It is the voters to whom the public administrators are responsible and these voters consist of two overlapping groups: (1) Those who use the services provided and (2) those who pay for those services through taxes. Thirdly, there are more voters who share the economic interest of the public administrators, e.g. lower costs, improved services, etc., than those who share the economic interests of the public employees, e.g. higher wages, greater security, better working conditions, etc. Last, public employees are able to participate in the decision-making process that affects their own terms and conditions of employment with or without collective bargaining; they have a right as citizens of their governmental unit to present ideas and to be heard by the elected officials.[2]

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[1] Morton R. Godine, *The Labor Problem in the Public Service*, (Cambridge: Harvard University Press, 1951), p. 84.

Opinions of Differences

A wide range of opinions have been expressed concerning the differences between public sector and private sector collective bargaining and these opinions differ not only in the elements of difference but also in opinions regarding the degree of importance. For example, Shaw and Clark concluded: "The non-profit nature of most public services and the political atmosphere are the most important differences between public sector and private sector collective bargaining."[3]

Louis V. Imundo differed and concluded: "The most important and widely discussed difference between private and public sector labor relations lies in the concept of sovereignty."[4]

Without expressing his opinion on their relative importance, George Hilderbrand recognized four main elements that distinguish collective bargaining in the public sector from bargaining in the private sector.

1. The right to strike or lock out is usually taken away by law or face public opinion or is relinquished by the union itself.

2. Most of the services are supplied with no additional cost and are financed by taxes. Thus, there is no substantial loss of revenue during a work stoppage even though public opinion may be an influential factor in times when the service is essential.

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[2] Clyde Summers, "Public Employee Bargaining: A Political Perspective," *Yale Law Journal*, Vol. 83, 1974, pp. 1156-1157.

[3] Lee C. Shaw and R. Theodore Clark, Jr., "The Practical Differences Between Public and Private Sector Collective Bargaining," *UCLA Law Review*, Vol. 19, No. 6, 1972, p. 885.

[4] Louis V. Imundo, "Federal Government Sovereignty and Its Effect on Labor-Management Relations," *Labor Law Journal*, Vol. 26, No. 3, March, 1975, p. 146.

3. The public administrator may lack the final authority to reach an agreement. Instead, he may be required to gain the consent of higher levels of political authority and ultimately seek approval from the relevant lawmaking body.

4. Legislative bodies ordinarily want to retain as much jurisdiction as they can and treat the legislative process that governs the relationship in the public service as reserved territory – excluded from collective bargaining. Thus, many of the traditional bargainable topics are exempt by statute from negotiations in the public sector.[5]

These opinions and priority evaluations are important for a general overview, now more specific comparisons are required to gain an accurate appreciation of the differences between public sector and private sector collective bargaining.

Market Restraints

A principal difference between public sector and private sector collective bargaining results from internal financial management and the economic environment in which both sectors operate. In the private sector, the market economy acts as a constraint on demands of workers for higher wages and better working conditions. These benefits gained by employees must be offset by higher worker productivity, lower employer profits, and/or higher prices to consumers.[6] Furthermore, since a degree of substitutability of various products and services exists in the market economy, a price increase in one product or service without a concomitant increase in the substitutable product or service causes a shift in purchases as customers adjust their preferences away from the higher priced product and service. In this reduction in the demand for the product which their union members produce, they may face a trade-off between benefits extracted for the employer and fewer hours of employment for the membership. Even when this does not occur, there continues to be a threat of substituting capital equipment (machines) for labor that is priced high. In addition, union negotiators have to be aware of the possibility of plant shut downs, plant movements to other locations, and management's flexibility in shifting production from plant to plant (none of which is a choice of the public employer). Further, unions must be continuously cognizant of the non-union labor in different locations which may offer their services at a lower price (wage). Thus, with all these interwoven factors to be considered, costs of collective bargaining must be kept within the limits of the market system.[7]

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[5] George Hilderbrand, "The Public Sector," *Frontiers in Collective Bargaining*, ed. John T. Dunlop and Neil W. Chamberlain, (New York: Harper and Row Publishers, 1967), pp. 126-127.

[6] Michael Moskow, J. J. Loewenberg and E. C. Koziara, "Collective Bargaining in Public Employment," (New York: Random House, 1970), pp. 14-18.

In the public sector, trade-offs between increased benefits and employment by employees are not as prevalent. Services provided by the public employer rarely have close substitutes and are generally not subject to competition from non-union organizations. Where there are close substitutes, e.g. private schools, selection is made on the basis of factors other than costs. Consumers in the public sector usually do not have a real choice in the purchases of their services, e.g. garbage collection, and they usually are required by law to pay for these services through taxes, regardless of the extent of their use, e.g. pay school tax even though children attend private schools or no children attend school. Unlike the private sector, government in effect has a monopoly, reduction in services will be resisted by the voters and work stoppages will not be tolerated. Thus, many times government officials are forced to settle labor disputes under pressure. Then, after settlement, they must seek new sources of revenue or shift funds from other services causing a redistribution of income by government rather than the allocation of resources by the market forces.[8] In the final analysis, the public employer has a limited number of choices that are available to the private employer.

Doctrines of Sovereignty and Illegal Delegation of Power

The doctrine of sovereignty means that supreme power is inherent in the political state[9] and the doctrine of the illegal delegation of power is a constitutional doctrine which forbids government from sharing its power with others except under certain conditions. Because these doctrines require that certain discretionary decisions be made solely on the basis of the judgment of a designated official, subjects of vital interests to public employees cannot be resolved through the collective bargaining process because authority to make these decisions are by law non-delegable.[10]

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[7] Harry T. Wellington and Ralph K. Winter, Jr., "Structuring Collective Bargaining in Public Employment," *Yale Law Journal*, Vol. 79, No. 5, April, 1970, p. 806.

[8] *Ibid.*, p. 807.

[9] Imundo, *op. cit.*, Vol. 26, p. 146.

[10] Harry H. Wellington and Ralph K. Winter, Jr., "The Limits of Collective Bargaining in Public Employment," *Yale Law Journal*, Vol. 78, No. 7, June, 1969, p. 1108.

Because of this limitation, collective bargaining as practiced in the private sector is not applicable to the public sector. Union negotiators do not know whether their counterpart can or cannot make binding decisions. For example, if the superintendent agrees to certain issues, e.g. class size, book supplies, additional resources, but the school board, city council, or state legislature refuse to supply funds, has anything been accomplished in negotiations? Who is the employer? Who has the authority to bargain?

State statutes and federal executive orders continue to be carefully shaped around preserving the sovereignty doctrine, and most public employees still are denied certain rights, e.g. the right to strike and to bargain over certain subjects classified under wages, hours, and other terms of employment.[11] On the other hand, federal statute in private sector has assured that the parties bargain as equal with certain rights guaranteed. In the public sector, the sovereignty doctrine continues to make bargaining equality impossible[12] and few will argue that the collective bargaining process is seriously limited.

In regard to the sovereignty issue in public sector collective bargaining, serious questions remain: How much sovereignty does the government require? Is it necessary for the government to apply the sovereignty doctrine to all areas of decision-making? National security, health, and welfare would find little argument, but is it necessary to continue to use the doctrine of sovereignty to support unilateral decision-making power of the government in determining wages, terms and conditions of employment? The federal government has already enacted legislation limiting its sovereignty immunity in tort and contract cases; but in the areas of labor-management relations, governments at all levels have remained inflexible and have carefully worded executive orders and statutes to protect government sovereignty.[13]

Political Process and Right to Strike

One of the most controversial issues in public sector collective bargaining is the right to strike. Since the right to strike has been traditionally limited or made illegal by the statutes, this subject will be coupled with the political processes for explanation.

Proponents favoring the right to strike in the public sector contend that this right has been accorded legal status as a social and economic weapon in the private sector since 1935. But, law-makers have essentially prohibited the right to strike in the public sector for two reasons: (1) government sovereignty (explained above), and (2) the essentiality of services.[14] Law-makers contend that any disruption of essential services would repudiate the fundamental function of government. On the other hand, proponents argued that a ban on the strike negates collective bargaining in the real sense of the word because the impasse procedure, e.g. arbitration, fact finding, etc., is substituted for the right to strike, and the parties find themselves preparing not for collective bargaining but instead for the arbitration or fact finding procedure. Thus, proponents conclude that the ban of a strike accompanied by a predetermined impasse procedure destroys any possibility of effective bargaining.[15]

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[11] Louis V. Imundo, Jr., "Some Comparison Between Public Sector and Private Sector Collective Bargaining," *Labor Law Journal*, Vol. 24, No. 12, December, 1973, p. 812.

[12] *Ibid.*, p. 810.

[13] Imundo, *op. cit.*, Vol. 26, p. 150.

Others do not view the right to strike very favorably because they believe the right to strike will allow unions to exercise a disproportionate share of power in the decision-making process. They contend that if public employee unions are allowed the right to strike, they also will use various methods of political pressure to allow them to accumulate more than an equal share of bargaining power. If they can do this, other interest groups which do not have the ability to strike but which do have competing claims for funds and appropriations will be competitively disadvantaged and the political process will be distorted.[16] For example, if teachers, firemen, policemen, or any other public groups were allowed to strike and the public employer consented to a collective bargaining agreement which raised salaries and other benefits substantially, the funds would have to be shifted from other government divisions unless additional funds can be obtained. (Lately, citizens have not supported tax increases.)

Another possibility in which the collective bargaining process will be seriously undermined in the political decision-making arena rests with the union's ability to make an "end-run"[17] either during or after negotiations. Since unions are often potent political forces, elective officials tend to be receptive to political approaches from union officials. But the process of collective bargaining cannot work effectively in the public sector when "end-runs" are used by unions and allowed by public officials.[18] In comparison to the private sector, the negotiators are delegated authority to make decisions within limits which are specified prior to negotiations. In these cases, decisions concerning wages, hours and conditions of employment are made during negotiations and top management deals with the union only through representatives selected for the negotiating team. Any attempt by the union to circumvent the negotiations would be classified as "bad faith" bargaining and without a doubt be rebuked by top management. Thus, in the private sector the "end-runs" are not tolerated and are not considered an issue.

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[14] Means the demand for the product is inelastic.

[15] Imundo, *op. cit.*, Vol. 24, pp. 815-817.

[16] Wellington and Winter, *op. cit.*, Vol. 79, p. 807.

[17] "End-runs" involve an attempt by the union to circumvent the collective bargaining process by making a direct appeal to the legislative body that is responsible for making the final decision. For example, teachers negotiate a 10 percent supplement to their salaries with the school board, then go directly to the city council and plead for a 12 percent increase.

SCOPE OF BARGAINING AND THE MERIT SYSTEM

The scope of bargaining involves the issues which are considered to be negotiable in collective bargaining. In the private sector these issues have been divided by the National Labor Relations Board into three categories: (1) unlawful, (2) mandatory, and (3) non-mandatory or permissive.[19] Unlawful issues, e.g. closed shops and hot cargo clauses are forbidden by law from negotiation and are unenforceable. Mandatory issues, e.g. wages, pensions, bonus, no-strike clause, etc., are bargainable and negotiation in "good faith" over these issues is required by statute. In this case either party can demand a mandatory issue and refuse to sign an agreement unless its demand is satisfied. Non-mandatory issues, e.g. demand that a superior be discharged, demand for withdrawal of an unfair labor practice, etc., involves subjects which the two parties agree to negotiate, even though they are not required by law to do so.[19] Specific designation of issues into these three categories are made on an *ad hoc* basis by the National Labor Relations Board and decisions on these categories continue to be updated.

While the private sector has an administrative and judicial procedure established for determining the scope of bargaining, in the public sector the line of distinction between issues is often not clear and laws that exist do not usually specify exclusionary issues. Thus, in comparing the public sector with the private sector, much less is generally accomplished by statute and administrative decisions regarding the subject matter of collective bargaining.[20] Without statutory or administrative guidance, much time will be lost in negotiations trying to determine the negotiable issues. Further, without distinguishing between mandatory, permissive, and illegal issues, difficult and frustrating problems will be faced.

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[18] Shaw and Clark, *op. cit.*, p. 872.

[19] Edwin Beal, Edward D. Wickersham, and Phillip Kienast, The Practice of Collective Bargaining, (Homewood, Illinois: Richard D Irwin, Inc., 1972), pp. 498-499.

Possible Conflict with Merit System

Collective bargaining in the public sector has been restricted by the merit system in many states and few would argue that collective bargaining has the potential for minimizing or eliminating some of the basic principles underlying the merit system in public employment.[21]

Before discussing the conflicts between collective bargaining and the merit system, a distinction between the merit system and the merit principle must be made. David Stanley explained this distinction clearly:

> The merit principle [is a concept] under which public employees are recruited, selected, and advanced under conditions of political neutrality, equal opportunity and competition on the basis of merit and competence.[22]

Warner and Hennessy also presented their interpretation of the merit principle:

> The merit principle means that personnel decisions regarding selection, assignments, career progression, promotion, layoff and discharge should depend solely upon a person's merit with no consideration given to either personal or political support.[23]

In practice, the unions have generally accepted the merit principle and have done little to weaken it; however, they view merit systems as unilateral programs designed to exclude important personnel policies, rules, and procedures from collective bargaining. For example, reliance on seniority in determining personnel matters or discharge of employees for refusing to pay dues under a union shop clause are viewed as being inconsistent with merit system procedures. Since unions are definitely interested in negotiating over these issues, they definitely view merit systems as conflicting with their approach to establishing personnel practices and procedures by collective bargaining.[24]

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[20] Harry T. Edwards, "The Emerging Duty to Bargain in the Public Sector," *Michigan Law Review*, Vol. 72, April 1973, pp. 885-934.

[21] I. B. Helburn and N. D. Bennett, "Public Employee Bargaining and the Merit Principle," *Labor Law Journal*, 23, No. 10, October, 1972, p. 619.

[22] David Stanley, "What Are Unions Doing to the Merit System?" *Public Personnel Review*, XXXI, April, 1970, pp. 108-109.

[23] Kenneth Warner and Mary Hennessy, *Public Management at the Bargaining Table*, (Chicago: Public Personnel Association, 1967), p. 284.

Accommodation Between the Merit System and Collective Bargaining

An appropriate issue is whether or not conflicts between collective bargaining and the merit system can be reconciled. Helburn and Bennett have recommended that accommodation can be achieved under the following conditions:

1. Exclusion of the esssential elements of the merit principle from the scope of collective bargaining. This condition is required to protect the merit principle from possible compromises that can result from collective bargaining.

2. Restriction of the unilateral authority of the merit system commissions to those matters essential to the implementation of the merit principle. This condition is necessary to provide a scope of bargaining sufficiently broad to encompass a number of non-merit personnel matters which have traditionally been within the unilateral authority of these commissions.[25]

In addition, effective accommodation would require two separate laws: (1) a merit system law which would be limited to the strict application of the merit principle and (2) a public employee collective bargaining law which would provide the exclusion of merit system matters from the scope of collective bargaining.[26]

Determination of the Appropriate Bargaining Unit

The appropriate bargaining unit in the private sector is determined by the National Labor Relations Board as the unit which is deemed most appropriate for collective bargaining purposes and which will contribute most toward accomplishing the objectives of the Labor-Management Relations Act. The composition of these units are determined by previously established NLRB standards, e.g. community of interests, bargaining history, extent of organization. In addition to administrative guidelines, certain categories of employees are required or allowed to be included in separate units, e.g. professional employees, guards, and categories, e.g. supervisors, confidential employees, are exempt from the bargaining unit.

In the public sector the question of appropriate bargaining unit is much more complex. With such variation in state statutes or with no statute at all, decisions in this area are difficult. Certain states having Commissions or Boards to provide guidance in this area and after a considerable experience, decisions on appropriate bargaining unit in the public sector become less difficult. Without statutory regulations or administrative guidance, difficult issues must be resolved. For example, should supervisors be included in the same bargaining unit as line employees? Should principals be included in the same unit as teachers? Should the bargaining unit encompass a broad range of agencies or division of government or include only one or equivalent agencies? Should the bargaining unit be local, county-wide, or state-wide? These questions and others are difficult to answer and without statutory and administrative guidance, they are even more complex.

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[24] Helburn and Bennett, *op. cit.*, pp. 622-623.

[25] *Ibid.*, p. 626.

[26] *Ibid.*, p. 627.

Conclusions

Any comparison of collective bargaining in the public sector and the private sector involves a wide range of differences, even though structurally many of the concepts of collective bargaining that are prevalent in the private sector are transferable to the public sector. The purpose of this section was not to focus on the common characteristics of these sectors but to investigate the major differences in order to provide an appreciation for and understanding of the possible conflicts that may be faced in the public sector. Subject differences include market restraints, doctrines of sovereignty and illegal delegation of power, the political process and right to strike, the scope of bargaining and merit system, and determination of the appropriate bargaining unit.

Serious thought must be given to each of these issues by legislators and policy-makers at each level of government and in a variety of divisions of government to anticipate problems and to ward off the mistakes and serious conflicts that occurred in the private sector in the 1930's. Many alternatives and choices are available; even more ideas and recommendations has been presented by many astute individuals. Now that Congress is considering a federal law and over 30 states have some type of legislation dealing with public sector collective bargaining, considered attention must be given to these critical issues and these most perplexing problems. Moreover, legislation must be passed to set up administrative procedures to assure that collective bargaining works where the parties desire it or to assure that collective bargaining is avoided where the legislators do not sanction it.

States seem to have the choice now of passing a law applicable to their specific environment and peculiar characteristics (an alternative raised by the Kupice study) or eventually face legislation by the federal government. At the federal level the choices now seem to be whether or not to pass a federal law to encompass all public sector employes. If Congress favors legislation, the choices seems to be: (1) to amend the Labor-Management Relations Act to remove the exemption of public employees, or (2) to pass legislation that will apply specifically to public employees. If a special law is passed, Congress may allow individual states to pass their own legislation under specific guidelines. Congress has sanctioned in the past state statutes in other personnel management areas, e.g. Equal Employment Opportunity Act (EEOA) and Occupational Safety and Health Act (OSHA); several states took advantage of the opportunity, although Alabama was not among this number, and now administer the laws themselves with financial support from the federal government. If these statutes, e.g. EEOA and OSHA, can be any predictor of the future for public sector collective bargaining, state legislature should be giving serious thought to the choices available to them.

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Appendices

Appendix A

Questionnaire

Organization.................................... Date.............................. Official.............................

Interview questions on "Professional Negotiations" in Alabama

1. From your organization's viewpoint, where do professional negotiations or collective bargaining stand in the state of Alabama?

2. If your organization testified at hearings before the Senate or the House in the last session of the legislature, has your position changed since that time?

3. Is a print-out available of the testimony at the hearings?

4. Where is the best resource for information on negotiations in the state?

5. What form, if any, should a negotiations law for public employees in Alabama be?

6. If you support a law in No. 5 should the teachers be covered under a separate law?

7. What is the attitude of the people of Alabama toward a negotiations law for public employees?

8. What is the present status of the Solomon Act?

9. If a law is passed, should supervisors and teachers be in the same bargaining unit?

10. Do you know of negotiations with public employees being in existence in Alabama?

Appendix B

October 15, 1973

Honorable Lawrence G. Sides
Mayor, City of Fairfield
Fairfield, Alabama

Dear Sir:

We received your request for an opinion dated October 8. The City of Fairfield had previously requested an opinion on the check-off of Union dues on September 11, 1973. The opinion was requested by the Hon. Henry Hardy a member of the Fairfield City Council. We replied to Mr. Hardy that the City of Fairfield has the right to check-off Union dues. We are enclosing a copy of our letter to Mr. Hardy.

You seem to be concerned about whether or not the employees are classified employees hired through the Personnel Board of Jefferson County. We do not see that it makes any conceivable difference whether the Union members are classified or unclassified.

We are also asked if the Mayor of a city may enter into a contract with regard to wages, hours, and working condition of city employees. The Supreme Court of Alabama, in two recent decisions, have held that public agencies cannot enter into binding bargaining agreements with Union members. See *International Union of Operating Engineers vs. Water Works Board of City of Birmingham* 276 Ala. 462, Ala. 463, 163 So. 2d 619 and *Nichols vs. Bolding*

277 So. 2d 868. These cases hold that public agencies can enter into such agreements only where they have express constitutional or legislative authority to do so. This does not mean that the Mayor and the City Council cannot meet and confer with members of the Sanitation Workers Union. It does not mean that agreements cannot be reached and carried out as a result of such meetings. It does not effect the power of the City of Fairfield to participate in a dues check-off. The city, in its discretion, may participate in the check-off. The Supreme Court decisions merely say that bargaining agreements reached between public agencies and public employees Unions are not enforceable in a court of law. In other words, the agreement would be terminable at will by the city of the Union members.

It is our recommendation that the City of Fairfield enter negotiations with the Sanitation Workers Union, and that the city bargain with the Union in good faith. As a result of such bargaining, the city should carry out any agreement with the Union that is within the power of the city. Even though such an agreement might not be binding in court, it is encumbent upon government officials at this time in our history to grant to public employees the same rights and freedom granted to Union members in the private sector.

In summary, it is our opinion: 1) that the city may, in its discretion, check-off Union dues; 2) that the Mayor and City Council may bargain with Union members; however, any agreement reached as a result of such bargaining is not legally binding on either party.

Sincerely,
WILLIAM J. BAXLEY
Attorney General
By–
WALTER S. TURNER
Chief Assistant Attorney General

WST/sw

Appendix C

ALABAMA PROFESSIONAL NEGOTIATIONS ACT

Section 1. Alabama Professional Negotiations Act; Purpose. – In order to promote the growth and development of education in Alabama which is essential to the welfare of its people, it is hereby declared to be the policy of the state to promote the improvement of personnel management and relations with professional employees within the public school districts of the state by providing a uniform basis for recognizing the right of public school professional employees to join organizations of their own choice. The State of Alabama has determined that the overall policy may best be accomplished by (1) granting to professional employees the right to organize and choose freely their representatives; (2) requiring public school employers to negotiate with professional employees organizations representing professional employees and to enter into written agreements evidencing the result of such negotiations; and (3) establishing procedures to provide for the protection of the rights of the public school professional employees, the public school employer and the public at large.

Section 2. Professional Public School Employees; Participation. – Professional public school employees shall have the right to form, join, and participate in the activities of organizations of their choosing for the purpose of representation on all matters of employment relations, but no professional public school employee shall be completed to join such an organization.

Section 3. Coverage: A professional public school employee means any professional employee of a school district, except the chief administrative officer.

Section 4. Representation: When a majority of the professional employees in a school district have designated an educational organization of their own choosing to negotiate for them, the organization shall be recognized by the school board as the exclusive negotiating agent for all the professional staff, except the chief administrative officer. The membership of any such recognized educational organization shall be composed principally of those employed in the teaching profession in Alabama, and certificated by the Department of Education.

Nothing in this section shall be construed to prevent certificated administrative personnel groups, including principals and assistant principals, from having the right to negotiate independently of the other professional personnel if they choose to do so as the result of a secret ballot.

Section 5. Administrative Agency: Alabama Education Employer-Employee Relations Commission.

(a) There is hereby created a commission to be known as the "education employer-employee relations commission," hereinafter called "the commission," which shall consist of three members, one to be appointed by the superintendent of public instruction, one by the governor, and one by the attorney general. The appointee of the superintendent of public instruction shall be the chairman of the commission. The members of the commission shall be persons experienced in educational activities. The original appointment by the superintendent of public instruction shall be for a term of three years. The original appointment by the governor shall be for a term of two years. The original appointment by the attorney general shall be for a term of one year. Their successors shall be appointed for terms of three years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. At all times, two members of the commission shall constitute a quorum.

(b) Members of the commission shall receive compensation as established by enabling legislation for their attendance at regular or special meetings of the commission or in the performance of such duties as the commission may direct. In addition to such compensation, they shall receive an allowance for actual and necessary travel and subsistence expenses while performing commission functions, away from their places of residence. Mediators and fact finders, appointed by the commission, including commission members when so serving, shall be reimbursed for expense and shall receive such compensation as the commission shall from time to time establish.

The commission shall exercise those powers and perform those duties which are specifically provided for in this act.

The commission shall have authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of this act. Such rules and regulations shall be effective upon publication in the manner which the commission shall prescribe.

The commission shall establish after consulting representatives of teacher organizations and of governing boards, panels of qualified persons broadly representative of the public to be available to serve as mediators, fact finders and members of fact finding boards.

Section 6. Scope of Negotiations: The employer and the exclusive representative shall meet at reasonable times, including meetings in advance of the employer's burget-making process, and shall negotiate in good faith with respect to wages, hours, and other terms and conditions of employment, and which are to be embodied in a written agreement, but such obligation does not compel either party to agree to a proposal or make a concession.

The employer or the exclusive representative desiring to initiate negotiations shall notify the other in writing, setting forth the time and place of the meeting desired and generally the nature of the business to be discussed, and shall mail the notice by certified mail to the last known address of the other party sufficiently in advance of the meeting.

Section 7. Grievance Procedures. Governing boards shall negotiate written policies setting forth grievance procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions affecting them, provided that such grievance procedures shall be included in any agreement entered into between the governing boards and the representative organization. Such grievance procedure shall provide for binding arbitration as a means for resolving disputes.

Section 8. Impasse Resolution. Parties to the dispute pertaining to the interpretation of a professional negotiations agreement may agree in writing to have the commission or any other appointing agency serve as arbitrator or may designate any other competent, impartial and disinterested persons to so serve.

Mediation. – The commission may appoint any competent, impartial, disinterested person to act as mediator in any dispute either upon its own initiative or upon the request of one of the parties to the dispute. It is the function of such mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute but neither the mediator nor the commission shall have any power of compulsion in mediation proceedings.

Fact Finding. – If a dispute has not been settled after a reasonable period of negotiation and in no case to exceed sixty (60) calendar days, and after the settlement procedures, if any, established by the parties have been exhausted, the representative, which has either been certified by the commission after an election, or has been duly recognized by the employer, as the exclusive representative of employees in an appropriate negotiating unit, and the employer, its officers and agents, after a reasonable period of negotiation, are deadlocked with respect to any dispute existing between them arising in the negotiating process, the parties jointly, may petition the commission in writing, to initiate fact finding under this section, and to make recommendations to resolve the deadlock.

If the parties do not mutually agree to make the findings and recommendations of the fact finder final and binding, the governor shall have the emergency power and authority, at the request of either party, after investigation, to order that the findings and recommendations on all or any specified issues of a fact finder in a particular dispute will be final and binding. The exercise of this authority by the governor shall be made on a case by case consideration and shall be made on the basis of his evaluation regarding the overall best interests of the state and all its citizens, the potential fiscal impact both within and outside the school district, as well as any danger to the safety of the people of the state or a subdivision.

Section 9. Unfair employer-employee practices. (a) A governing board or its agent may not (1) interfere, restrain or coerce an employee in the exercise of his rights; (2) dominate or interfere with the formation, existence or administration of an organization; (3) discriminate in regard to hire or tenure of employment or a term or condition of employment to encourage or discourage membership in an organization; (4) discharge or discriminate against an employee because he has signed or filed an affidavit, petition or complaint or given testimony, under this chapter; (5) refuse to negotiate in good faith with an organization which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative; (b) A labor or employee organization or his agents may not (1) restrain or coerce (A) an employee in the exercise of the rights guaranteed in this chapter, (B) a governing board in the selection of his representative for the purposes of negotiating or the adjustment of grievances; (2) refuse to negotiate in good faith with a governing board, if it has been designated in accordance with the provisions of this chapter as the exclusive representative of employees in an appropriate unit.

Section 10. Strikes. – It shall be unlawful for any school employee, school employee organization or any affiliate, including but not limited to state or national affiliates thereof, to take part in or assist in a strike against a school employer.

A school district shall not pay any school employee for any day when the school employee fails as a result of a strike to report for work as required by the school year calendar, and he shall be fined an equal amount for each day missed.

Section 11. Severability. If any provision of this act or the application thereof to any person or circumstance is invalid, such invalidity shall not affect the other provisions or applications of this act, which can be given effect without the invalid provision or application, and, to this end, the provisions of this act are declared to be severable.

Section 12. Effective Date: This law shall take effect on January 1, 1977.